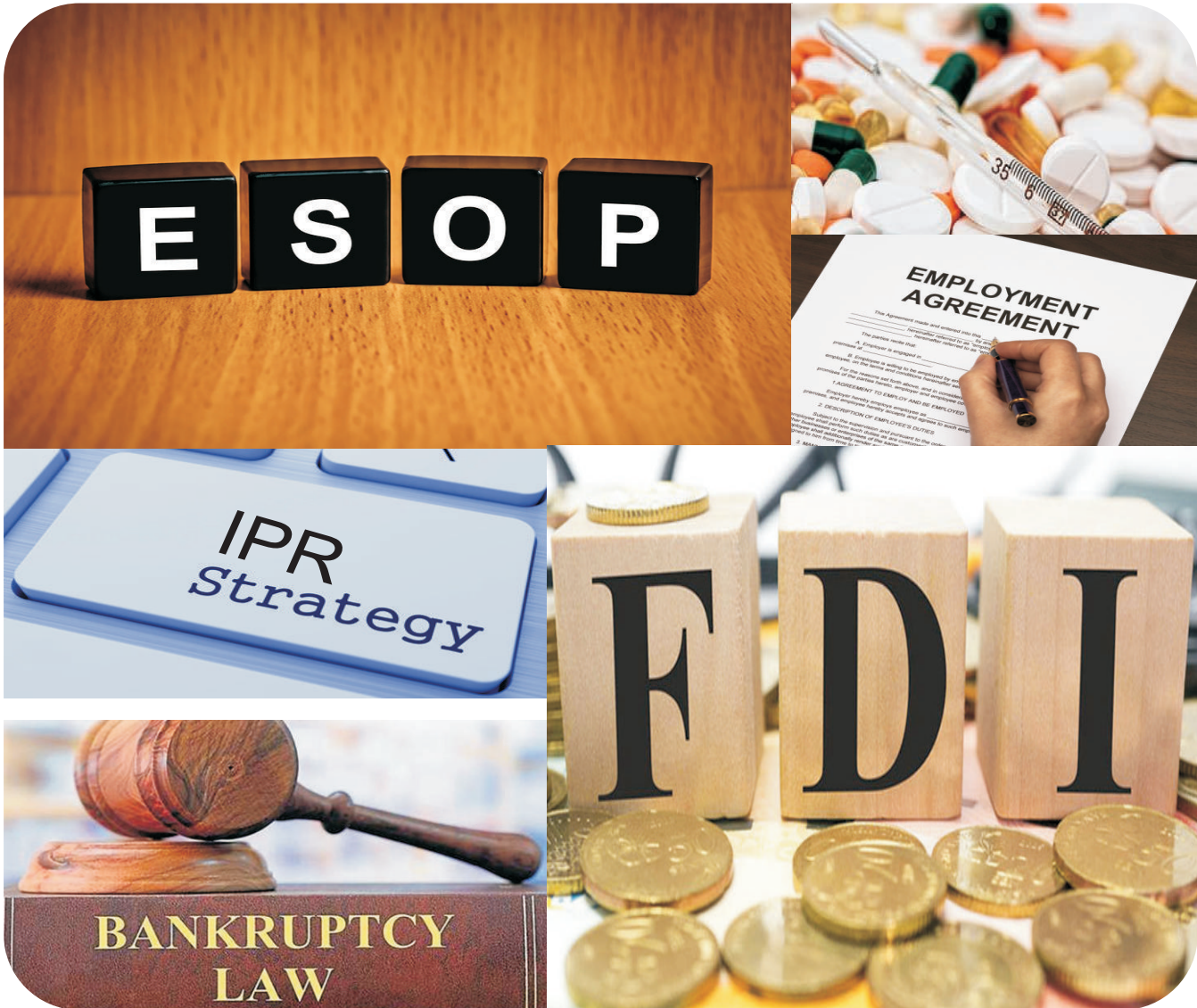




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SEPTEMBER 2017. Vol. X, Issue IX

# INDIAN LEGAL IMPETUS<sup>®</sup>





**Manoj K. Singh**  
Founding Partner

“Ideas are easy. Implementation is hard.”

The above words of Guy Kawasaki (co-founder of Alltop.com startup venture -- an “online magazine rack” of popular topics on the web, and a founding partner at Garage Technology Ventures) on one hand hints at hurdles at entrepreneurial level but also (thinking out loud) could point at various issues arising out of regulatory compliances and the eco-system in which a start-up has to survive.

With Startup India, a flagship initiative of the Government of India which is intended to build a strong eco-system for nurturing innovation and Startups in the country, we anticipate sustainable economic growth and large scale employment opportunities. For empowering Startups to grow through innovation and design, Government of India announced the Action Plan addressing all aspects of the Startup ecosystem. The said Action Plan is based on the following three pillars: # Simplification and Handholding # Funding Support and Incentives # Industry-Academia Partnership and Incubation.

Keeping the above in mind we thought it would be imperative to collate relevant information and updates in this issue of Indian Legal Impetus’s special edition on & for startup ventures.

To begin with, there is a detailed note on regulatory guidelines applicable to e-pharmacy (an online pharmacy, Internet pharmacy or mail-order pharmacy that operates over the Internet and sends the orders to customers through the mail or shipping companies) startup ventures.

This is followed by a description of fast track resolution process for corporate persons entailed in the Insolvency & Bankruptcy Code which can be availed in relation to startup ventures as well.

Next is a write up on applicability, advantages and challenges relating to Employee Stock Option Plan or ESOPs qua a startup company under Companies Act 2013 as ESOPs are very trendy method used by companies to attract, motivate and retain employees.

Further, there is an article on operating agreements that are of utmost relevance for a startup venture highlighting crucial aspects of contractual arrangement between stakeholders. Also, for labor laws perspective a detailed note on various exemptions made available to start up ventures by the Government to work with ease and get acclimatized to regulatory environment in the initial years of business.

From the IPR section, a note on relevancy of having an IPR strategy in place for a start up venture has been included herein.

In addition to the above startup focused content, there is also a note on limited liability partnership including procedure to incorporate, characteristics & advantages of this hybrid structure of business. Further, there is an analysis on whether an application under section 9 of the Insolvency & Bankruptcy code, 2016 is maintainable at the instance of workmen association. Lastly, few updates in the labor laws have been included herein.

Feel free to send us your comments / suggestions at [newsletter@singhassociates.in](mailto:newsletter@singhassociates.in). We endeavor to keep the content of the newsletter relevant, interesting and enriching.

Thank you.



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## REGULATORY GUIDELINES FOR E-PHARMACY START-UPS

Vijaylaxmi Rathore

An ePharmacy is an online pharmacy, Internet pharmacy or mail-order pharmacy that operates over the Internet and sends the orders to customers through the mail or shipping companies. In India ePharmacy sector is in its growing stage, whereas in US and Europe it is fully functional and regularized. In recent years ePharmacy startups in India has been rising at a steady pace, with focus to deliver affordable medicines to anyone who needs it, and to supply the medicines in remote areas where physical drug stores are not present. Moreover, the present ePharmacy stores not only sell medicines but also offer other facilities like - list of diagnostic (pathological/radiological) test bookings, online consultation to the Physician, and consumer education through value added information/educational leaflets/articles on their websites.

However, it's been observed that the offline/physical pharmacy community has been opposing the ePharmacy business model, and a nationwide strike against the e-pharmacies was performed under the leadership of All India Organization of Chemists & Druggists (AIOCD). According to the retail chemist shop owners as cited in Indian express "verification of drug quality in online retail is difficult and the sale of psychotropic substances will also increase online". In response to this, the Indian Internet Pharmacy Association (IIPA) a self-regulatory body for e-Pharma portals said that, the e-pharmacies will enable transparent drug dispensing mechanism and give high accountability as the entire procedure will be tracked.

Apart from this, the present drug regulation in India resides under Drugs and Cosmetics Act, 1940, Drugs and Cosmetics Rules, 1945, Pharmacy Act, 1948, Indian Medical Act, 1956 and Code of Ethics Regulations, 2002, Information Technology (IT) Act, 2000 etc..The powers of regulation have been distributed between the centre and the state governments. Central Government is responsible for licensing of drug imports and the state governments are responsible for the manufacture, sale and distribution of drugs. Every state has its own Drugs Control Administration<sup>1</sup>.

1. <https://www.omicsonline.org/open-access/epharmacies-regulation-in-india-bringing-new-dimensions-to-pharmasector-2167-7689-1000175.pdf>

However, the Drugs and Cosmetics Act, 1940 does not differentiate between medicines sold online or offline; there is no solid regulation/policy available to regulate ePharmacy operation in India. Therefore, the health ministry and Central Drug Standard control Organization (CDSCO) have been working together on ePharmacy regulation policy, which is expected to streamline the online sales of medicine. Despite this the present developments of entrepreneurial ventures in ePharmacy Sector has already established the ePharmacy success story for a greater cause. In this view, the IIPA in the absence of ePharmacy policy by the government announced a voluntary "Code of Conduct", as this Code complies with existing Drug and Cosmetic Act, 1940 suggests that-

- The e-pharmacies will only process scheduled medicines (Schedule H, H1) against a valid physical or scanned copy of the prescription. They will not process schedule X and other habit forming medicines.
- The e-pharmacies will only dispense medicines through licensed pharmacies and will deliver medicines "safely and with appropriate instructions", according to the code.

Online medicine sellers will also partner with the government to recall medicines, raise awareness on the Jan Aushadhi scheme and also compile adverse events of medicines for the National Centre for Pharmacovigilance<sup>2</sup>.

Moreover, The Draft Pharmaceutical Policy of 2017 also encourages ePharmacies, and seeks to take on the powerful distribution lobby by allowing e-pharmacies, which will cut down channel costs<sup>3</sup>.

2. <http://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/until-government-releases-rules-e-pharmacies-to-self-regulate-iipa/articleshow/5555554.cms>

3. [http://app.investmentguruindia.com/Mobile/ResearchArticles/2017/August/Pharma\\_Sector\\_Update\\_170817.pdf](http://app.investmentguruindia.com/Mobile/ResearchArticles/2017/August/Pharma_Sector_Update_170817.pdf)



## THE CENTRAL DRUGS STANDARD CONTROL ORGANIZATION (CDSCO) AND EPHARMACY

The Drugs Consultative Committee (DCC) of CDSCO is a statutory body constituted under Section 7 of the Drugs and Cosmetics Act, 1940. The DCC is authorized to maintain the uniformity of Drug and Cosmetic Act, 1940 throughout the country. In regards ePharmacy, the DCC on 11 Aug 2015 constituted a sub-committee of seven members headed by Mr. Harshdeep Kamble, Commissioner, FDA, Maharashtra, to examine the issue of sale of drugs on the internet in the light of practices being followed in the developed countries where such provisions are available for e-pharmacies, while taking care the risks and concerns related to such sales.

Meanwhile, On 30 December 2015, The CDSCO notified that selling of drugs through internet is not permitted as it violates the provisions of the Drugs & Cosmetics Act, 1940 and the Rules, 1945,<sup>4</sup> and the status stands same at present as reported in the minutes of 50<sup>th</sup> DCC meeting held on 5th November, 2016.

The sub-committee had invited suggestions /views on online pharmacy regulation, further received suggestions/views regarding the same from various stakeholders, medical and Pharma associations, regulatory agencies, trade organizations & companies etc. It also received around 368 representations from individuals and other organizations, As few of these suggestions are highlighted below-

Associations	Suggestions/views regarding ePharmacy
Indian Internet Pharmacy Association (IIPA)	The association gave a detailed presentation on advantages of online mode of sale and also advocated that the market place and electronic platforms are in line with the provisions of the Information Technology Act, 2000 and Pharmacy Practice Regulation 2015. They also reiterated that the sale of medicines does not violate prevailing provisions of the Act.

Associations	Suggestions/views regarding ePharmacy
Federation of Indian Chambers of Commerce & Industry (FICCI)	FICCI gave a detailed presentation on advantages of this mode of sale and also advocated that the market place and electronic platforms are in line with the provisions of the Information Technology Act, 2000 and Pharmacy Practice Regulation 2015. They also reiterated that the sale of medicines through online mode do not violate prevailing provisions of the Act.
Indian Pharmaceutical Alliance (IPA)	The changes in the present statute shall be made to ensure that online pharmacy players shall deliver against every order and should not be selective. It should be mandatory to cater and deliver to the remote and rural areas of the country. They said that this mode of sale will increase the accessibility of the medicines in general.
Organization of Pharmaceutical Producers of India (OPPI)	Although online pharmacy have some advantages such as medicines being available at reduced cost, reduced inventory but cautioned on entry of counterfeit and spurious medicines. The system should ensure the traceability of the medicines.
Indian Medical Association (IMA)	The sale of medicines over internet will further contribute this menace. IMA is not in favor of encouraging this mode of making availability of medicines. The prescriptions on the electronic platforms should be verifiable.
Consumer Online Foundation, New Delhi	The foundation has submitted the copy of written representation and points for consideration. While accepting the online pharmacy that the technology advancements are inevitable, but it has to be taken with caution and with certain safeguards.

4. <http://www.cdsc0.nic.in/writereaddata/Online-Sale-dec-2015.pdf>



Associations	Suggestions/views regarding ePharmacy
Pharmacy Council of India (PCI)	The Pharmacy Practice Regulations have been made by Pharmacy Council of India, with approval of the Central Government, as powers conferred under Section 10 and 18 of the Pharmacy Act, 1948. While dispensing the medicines whether online or offline, the provisions under these regulations have to be considered.
All India organization of Chemist and Druggist Association (AIOCDA)	The association out rightly opposed the concept of online sale of medicine. The concerns raised by the associations on online sale with a detailed power point and written presentation:
All India Drug Control Officer's Confederation (AIDCOC)	This activity should be covered under the Drugs and Cosmetics Act, 1940 and rules 1945 with specific amendments to it.

The sub-committee after going through the suggestions, and considering the international practices followed in some of the major countries and also keeping the existing provisions of the Drugs and Cosmetics Act, 1940 and Rules, 1945 made there under, Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954, Drug Price Control Order (DPCO), 2013, IT Act, 2000 etc. made 22 points recommendation in its report: as some of them are suggesting-

EPharmacy may be permitted under strict monitoring and vigilance with effective law enforcement and period inspections. It also suggests some geographical restrictions for supply of drugs will be required for effective administrative control on online sale such as drug recalls and Pharmacovigilance.

In order to regulate online pharmacies, a National Portal will be created, which will be the nodal platform for transacting and monitoring online sale of drugs. Whereas the e-pharmacy service providers need to be registered with Central Drugs Standard Control Organization (CDSCO) under the Drugs and Cosmetics Rules, 1945. No unregistered entity shall be permitted to undertake online sale of medicines.

However the Sub-committee also suggested amendments in the Drugs and Cosmetics Rules, 1945<sup>5</sup>.

### CONCLUSION:

In 50<sup>th</sup> meeting of DCC, the committee accepted the report of the Sub-committee that the report should be forwarded to the Govt. for consideration and further action<sup>6</sup>.

At Present, the leading ePharmacy players such as- 1mg, Netmeds, mChemist, Myra, Medlife, PharmaEasy Medidart as many as 140 startups are currently operating in the online pharmacy market. There is an immediate need to have effective regulatory mechanism as the delay in process is not beneficial for the e-pharmacy service providers and consumers as well.

5. <http://www.cdsco.nic.in/writereaddata/Sub-Committee%20Report%20on%20e-pharmacy.pdf>

6. <http://cdsco.nic.in/writereaddata/ddc50report.pdf>



# FAST TRACK INSOLVENCY PROCESS WITH RESPECT TO START-UP

Himanshu Chawla

The Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “the Code”) passed by the Parliament is a welcome overhaul of the existing framework dealing with insolvency of corporate, individuals, partnerships and other entities. It paves the way for much needed reforms while focusing on creditors driven insolvency resolution. One of the main essences of the Code is Time Bound Resolution Process of the financial assets of the company. The Code gives timeline of 180 days for Corporate Insolvency Resolution Process (hereinafter referred as “CIRP”), which can be extended to 270 days, for completion of the resolution process<sup>7</sup>. However, the Code also provides provisions to expedite more the resolution process in the form of Fast Track Insolvency Resolution Process. It aims to accelerate the insolvency resolution process of certain categories of corporate debtors with lesser complexities. The fast track process which can be initiated by a creditor or the corporate debtor itself cuts down the time taken to complete an insolvency resolution to almost half as compared to the regular process under the Code.

The Insolvency and Bankruptcy Board of India (hereinafter referred as “IBBI”), in exercise of its power conferred by sections 58, 196, and 208 read with section 240 of the Code, has notified the Insolvency and Bankruptcy Board of India (Fast Track Resolution Process for Corporate Persons) Regulations, 2017 (hereinafter referred as “the Regulation”. These Regulations provide the process from initiation of insolvency resolution of eligible corporate debtors till its conclusion with approval of the resolution plan by the Adjudicatory Authority. The time period given for the completion of Fast Track Resolution Process is 90 days, as against 180 days for CIRP. However, the Insolvency Resolution Professional may apply to Adjudicating Authority for the extension of time for a further period of 45 days in case of Fast Track Process and 90 days for CIRP.

An application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely:

- a. A small company, as defined under clause (85) of section 2<sup>8</sup> of the Companies Act, 2013; or
- b. A Start-up (other than the partnership firm), as defined in the Government of India notification issued by the Ministry of Commerce and Industry<sup>9</sup>;
- c. An unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding Rs. 1 Crore.

The Regulations also laid down important definitions and procedure to carry out the resolution process:

- Regulation 2(1)(j) defines “fast track process period” which means the period of ninety days beginning from the fast track commencement date and ending on the ninetieth day; whereas the Regulation also define “fast track commencement date” under regulation 2(1)(l) which means the date of admission of an application by the Adjudicating Authority for initiating the fast track process under Chapter IV of Part II of the Code.
- The Public announcement inviting proof of claims is to be made by the interim resolution professional for a fast track insolvency resolution process within 3 days of his appointment.

<sup>8</sup> “small company” means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees;

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

<sup>9</sup> G.S.R. 501 (E) notification dated 23<sup>rd</sup> May, 2017, available at: <http://startupindia.gov.in/notification.php>

<sup>7</sup> Section 12 of the Insolvency and Bankruptcy Code, 2016





- If Interim Resolution Professional, after analysing the financial record of the company, comes to the conclusion that the fast track process is not applicable to the corporate debtor then he can make an application to the Adjudicating Authority to pass converting the fast track process into CIRP<sup>10</sup>.

In the light of above discussion, it is pertinent to discuss one of the types of abovementioned corporate debtor on which the fast track process is applicable, i.e. Start-ups.

An entity can be considered as a “Start-Up<sup>11</sup>”:

- a) If it is incorporated as a private limited company(as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India; and
- b) Upto seven years from the date of its incorporation/registration; however in the case of Start-Ups in the biotechnology sector, the period shall be up to ten years from the date of its incorporation/registration; and
- c) If its turnover for nay of the financial years since incorporation/ registration has not exceeded Rs. 25crores; and
- d) If it is working towards innovation, development or improvement of products or processes or service, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Provided that any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered a “Start-Up”.

The process of recognition as a “Start-up” shall be through an online application made over the mobile app/ portal set by the Department of Industrial policy and Promotion. Entities will be required to submit the online application along with the Certificate of Incorporation/Registration and other relevant details as may be sought. Start-ups also have to submit a

write-up about nature of business highlighting how is it working towards innovation, development or improvement of products or process or services or its scalability in terms of employment generation or wealth creation<sup>12</sup>.

The Start-Up ecosystem is gaining attraction due to various initiatives taken by the Government of India. A fast track insolvency process under the Code is an efficacious way to encourage upcoming and future business as it will provide easier exit to the creditors in case of failed ventures. Faster resolution will attract investors to start-ups, most of which don't survive long, as well as small firms. This could be one of the reasons why the Government, as a part of its Start-Up India Initiative, wanted to give start-ups an easy option to exit within 90 days.

### CONCLUSION:

The very purpose of introducing Fast Track Regulation is to lower down the burden of small companies from following the cumbersome procedure of Resolution Process as specified under the Code for larger companies. However, as reflected from the Regulation, the process is almost same as that of the resolution process of larger companies, only the moratorium period has been reduced to 90 days and some other procedural time frame has been reduced. Thus, it would be fair to say that 90 days time limit has ensured that the Resolution professional work in expeditious manner. Moreover, the Fast Track Regulation should make it easier for the Creditors proposing resolution for smaller companies.

<sup>10</sup> Regulation 17 of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2017

<sup>11</sup> *Supra* note 3

<sup>12</sup> *Supra* Note 3



# ROLE OF ESOP IN START-UPS

Kumardeep

## INTRODUCTION: THE EMPLOYEE STOCK OPTION PLAN (ESOP) & START-UPS

### ESOPS

The Employee Stock Option Plan (ESOP) or Employee Stock Option Scheme (ESOS) is the option or a right which is being offered by a company to its employees to purchase its shares at a pre-determined price in the future. ESOP is not an obligation rather it is a right of the employee to purchase certain amount of share of the company as pre decided price.

ESOP is basically a tool used by a company to retain its employees and get them awarded for being associated with the company. As a part of an employee's compensation ESOP creates a sense of ownership in the mind of employees and their interest in the organization remains intact. ESOP plays vital role to attract employees at the growing stage of the company.

As defined under the provisions of section 2(37) of the Companies Act, 2013, *"employees' stock option" means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.*

The Companies Act, 2013 under Section 62(1)(b) provides that a company may, subject to compliance with conditions as prescribed under the Rules (in case of unlisted company) and SEBI Regulations (in case of listed companies), offer shares to the employees under a scheme of employees' stock option.

### START-UPS

Start-up, literally means a newly established business. However, as defined by the Department of Industrial Policy and Promotion ("DIPP"), vide Notification<sup>13</sup> number G.S.R. 180(E), dated 17<sup>th</sup> February, 2016 and amended vide Press Release<sup>14</sup> dated 25.05.2017, 'Startup' means an entity, incorporated or registered in India :

- a) Not prior to seven years, however for Biotechnology Startups not prior to ten years,
- b) With annual turnover not exceeding INR 25 crore in any preceding financial year, and
- c) Working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Provided that such entity is not formed by splitting up, or reconstruction, of a business already in existence. Provided also that an entity shall cease to be a Startup if its turnover for the previous financial years has exceeded INR 25 crore or it has completed 7 years and for biotechnology startups 10 years from the date of incorporation/ registration. Provided further that a Startup shall be eligible for tax benefits only after it has obtained certification from the Inter-Ministerial Board, setup for such purpose.

It may be noted that under the provisions of the Companies Act, 2013 read with the Companies (Share Capital and Debentures) Rules, 2014, following class of persons are not considered as employee to be eligible for ESOP:

- (i) An employee who is a promoter or a person belonging to the promoter group; or
- (ii) A director who either himself or through his relative or through any body corporate, directly or in-

<sup>13</sup> [http://dipp.nic.in/English/Investor/startupindia/Definition\\_Startup\\_GazetteNotification.pdf](http://dipp.nic.in/English/Investor/startupindia/Definition_Startup_GazetteNotification.pdf)

<sup>14</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=162140>



directly, holds more than 10% of the outstanding equity shares of the company.

However, in order to promote startups, the Ministry of Corporate Affairs vide Notification<sup>15</sup> dated 19.07.2016 issued the Companies (Share Capital and Debentures) Third Amendment Rules, 2016 wherein it was provided that Startups may issue the shares under ESOP to their promoters and directors who hold more than 10% for the first 5 years from the date of their incorporation. The restriction on issuing shares under ESOP to promoters and such directors continues for companies which does not fall under the category of startups.

## ADVANTAGES OF ESOPS IN STARTUPS

Startups being newly formed entities may get benefits of ESOPs in one or more of the following ways:

### (a) **To attract and retain talented employees:**

As discussed above, ESOPs are structured in such a way that it gives a sense of ownership of the employees in the organization if they stay over a period of time to gather the benefits. Accordingly, Startups can use this tool to retain its talented resources. In the initial phase, it is important for a startup entity to retain the talented manpower resources, the manpower resources can be a promoter/director/employees. To retain them the best way is to make them feel that they are also a part of the kitty which is being created. No better tool than ESOPs can bring this feeling among them.

### (b) **To motivate employees to work better and participate actively in the success of the company:**

ESOPs play vital role in motivating employees of a startup as the employees understand that better the company performs, the greater will be the value of their shares. Therefore, they

work hard for the growth of the company. The employees are well aware that if the company does not perform well then the market value of the shares would be less than the price paid by them to acquire shares under the ESOP and thus they take active parts for the success of the company.

### (c) **To control costs and minimize the risk:**

Under the ESOPs shares are issued as part of compensation in substitution of cash variables and bonus. The startups, in the early stages of their businesses are unable to pay competitive and high salaries to their employees as compare to well established businesses or large companies, however, at the same time startups also in need of talented and motivated human resources who can perform well for the growth of the company in future. Therefore, by offering under ESOPs, such deserving employees may be retained by startups without spending much cash variables.

## CHALLENGES FOR THE SUCCESS OF ESOPS IN STARTUPS

Undoubtedly, ESOPs benefit both the company and its employees mutually, however, there are certain challenges for the successful implementation of ESOPs in startups. Though ESOPs are considered an excellent tool for startups to magnetize and retain talented employees although it's a challenge to convince the employees about the growth of the company in future. This is the foremost hurdle in the successful implementation of ESOPs in startups as in the initial phase of operation the success of startups is only anticipated and thus it become a game of chance for the employees. The startups are basically unlisted companies and their shares are not readily marketable which create a doubt in the minds of employees to realize profit from such shares acquired by them under ESOPs in consideration of their compensation which were sacrificed as an employee. In case the startups remain unlisted company even after the vesting period, the shares cannot be sold in open market and employees will find no way to exit from the scheme.

Another aspect of challenge in the startups is the taxability issues in the hands of employees. Under the

<sup>15</sup> [http://mca.gov.in/Ministry/pdf/Rules\\_19072016.pdf](http://mca.gov.in/Ministry/pdf/Rules_19072016.pdf)



ESOP, the taxability arises at two stages i.e. at the time when the employee exercises their option and at the time when they sell such shares. At the time of exercising the option, the tax is to be paid on the amount of difference between the fair market value and the exercise price (i.e. the price at which the shares were bought). Later on at the time of selling such shares acquired under the ESOP, the employee has to pay capital gain tax on the differential amount of selling price and the fair market value.

In light of above, ESOPs cannot be implemented successfully in Startups unless and until the ESOPs plan is drafted in such a way that ensures the attainment of desired objectives of both the company and employees and also provide mutual benefit to them.

## CONCLUSION

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Undoubtedly, the ESOPs are very trendy method used by companies to attract, motivate and retain employees. This tool of ESOPs have two fold benefit i.e. reducing cash outflow and retaining deserving employees for their growth. Employees also see this scheme as a long term investment for which they have to compensate with their cash perquisites and bonuses. ESOPs are beneficial to both employees as well as Startups if implemented effectively.



# LIMITED LIABILITY PARTNERSHIP -THE HYBRID STRUCTURE

*Akanksha Tomar & Jatin Kapoor*

## BACKGROUND

The concept of limited liability partnership was first originated in United States and it came to India through Limited Liability Partnership Act, 2008. Its history is quite interesting. During the financial crisis of United States in the late 1980s and early 1990s hundreds of saving and loan firms were declared insolvent. This resulted in collapse of many accountancy and legal firms who thereafter faced enormous legal claims instigated by the US government. These claims led to burden on those partners of such firms who were not even responsible for the failure and were held liable to repay millions of dollars in compensation. Then in 1991 a new concept of limited liability partnership (LLP) was introduced in the city of Texas which gained popularity in majority of United States and eventually resulted in passing of LLP legislation.

The Company form of business is considered to be the most popular form of business in the industry but in case of professionals who render secretarial, legal, accountancy, and doctorate services, who not only have to comply with the legal entity structure but are also regulated by their respective governing statutes of which they are members, for them Company form of business is not possible to start with as they are not allowed to operate as corporate body.

On the other hand the concept of partnership firm which does not provide limited liability and moreover where the personal property of all the partners is always at risk is not considered to be suitable for many. Thus to overcome the drawbacks of company and partnership form of business there was a need of a hybrid form of entity which can have the characteristics of both, a partnership firm and a Company. As it is a universal truth that necessity is the mother of all inventions, hence India adopted the concept of Limited Liability Partnership which was already tried and tested by the countries like UK, US, China etc.

Limited Liability Partnership (LLP) is a newly introduced corporate entity type in India favorable for small and medium sized businesses. A LLP provides many of

the benefits of a Private Limited Company while being easier to maintain compliances. Low registration fee and easy maintenance make LLP a first choice for many of the small businesses in India.

A limited liability partnership is a partnership form of business which has a separate legal entity from its partners having a perpetual succession. In India it is governed by Limited Liability Partnership Act, 2008 which was notified on 31.03.2009 and came into effect from 01.04.2009 which is amended from time to time. Being the separate legislation, the provisions of Indian partnership act, 1932 are not applicable to LLP. This is a great relief to the partners, particularly professionals like Company Secretaries, Chartered Accountants, Cost Accountants, Advocates and other professionals.

## CHARACTERISTICS AND FEATURES OF AN LLP

1. LLP is a blend of body corporate and a separate legal entity from its partners which has a perpetual succession;
2. LLP can own assets in its own name, and can also sue and be sued;
3. The partners of LLP have the right to manage the business directly, unlike the corporate shareholders which thereby means no Owner/manager distinction;
4. Every LLP shall have at least 2 partners and there is no limit for the maximum numbers of partners. The partners to LLP can be an individual as well as body corporate;
5. One partner is not responsible or liable for another partner's, misconduct or negligence;
6. LLP should be formed with a profit motive;



7. The rights and duties of partners in an LLP are to be governed by the agreement between partners. The duties and obligations of Designated Partners shall be as provided in the law;
8. Partners of LLP are liable only to the extent of their contributions in the LLP
9. Every LLP shall use the words "Limited Liability Partnership" or its acronym "LLP" as the last words of its name;

## BENEFITS AND ADVANTAGES OF LLP ALLURING START-UPS:-

### THERE IS NO LIMIT ON NUMBER OF OWNERS OF LLP

LLP requires minimum 2 partners but there is no limit on maximum number of partners unlike a private limited company wherein there is a restriction of not having more than 200 members.

### LOWER COST INVOLVED IN FORMATION OF LLP

The cost of registering LLP is low as compared to cost of incorporating a private limited or a public limited company.

### NO REQUIREMENT OF CONDUCTING COMPULSORY AUDIT IN CASE OF LLP

All the companies, whether private or public, irrespective of their share capital, are required to get their accounts audited. But in case of LLP, there is no such mandatory requirement. A Limited Liability Partnership is required to get their accounts audited only if:-

- a) If the paid up capital of the LLP exceeds Rs. 25 Lakhs, or
- b) If the annual turnover of the LLP exceeds Rs. 40 Lakhs

### LOWER COMPLIANCE BURDEN AS COMPARED TO OTHER FORMS OF BUSINESS STRUCTURE

In case of Limited Liability Partnership, the only requirement is to file the Annual Return & a Statement

of Accounts & Solvency as compared to other forms of entities which require large number of compliances.

### EASY TO WINDUP

It is not only easy to start a LLP; it is also easier to wind up the same as compared to other business entities.

## PROCEDURE FOR INCORPORATING A LIMITED LIABILITY PARTNERSHIP:

1. To incorporate a Limited liability Partnership, all designated partners of the proposed LLP shall obtain "Designated Partner Identification Number (DPIN)" by filing an application individually online in E-Form DIR -3 with Ministry of Corporate Affairs. In case any of the desired partners obtain Director Identification Number (DIN) then the same can be used as a DPIN.
2. The Information Technology Act, 2000 provides for use of Digital Signatures on the documents submitted in electronic form in order to ensure the security and authenticity of the documents filed electronically. This is the only secure and authentic way that a document can be submitted electronically. As such, all filings done by the Limited Liability Partnership (LLP) are required to be filed with the use of Digital Signatures by the person authorized to sign the documents.

**Acquire DSC-** The person authorized to sign the documents is required to obtain Digital signature certificate (DSC) the same can be acquired by a Certifying Authority, who has been granted a license to issue a digital signature certificate under section 24 of Indian Information Technology Act 2000.

**Register DSC-** After acquiring Digital Signature Certificate, the role check can be performed on MCA portal only once the signatories have registered their Digital Signature Certificates with LLP application.

3. To file an e-form or to avail any services on LLP portal, it needs to first require registering as a user in the relevant user category, such as registered and business user.
4. To apply for name of the proposed LLP to be registered, Form 1 for application for reserva-



tion or change of name to be filed with MCA Portal. Once the name is reserved for proposed LLP, Form 2 needs to be filed for incorporation of the LLP along with required documents. Once the form is approved by the concerned official of the Ministry, an email regarding the incorporation and status of the form will be changed to

“Approved.”

5. After incorporation of LLP, an initial LLP Agreement is to be filed within 30 days of incorporation of the Limited Liability Partnership. Form 3 shall be filed for the information with regard to Limited Liability Partnership and Changes, if any made in the agreement.

## CONCLUSION

The Limited Liability Partnership Act, 2008 is recognition of the changing needs of the business environment in the current era. The incorporation of the LLPs will provide a helpful new option for startups like professional partnerships which are anxious about their exposure to liability. In view of the growth of Indian Service industry in recent times, startup LLPs would further contribute to the growth of the service industry and a large number of existing companies, public as well as private, are expected to convert into LLPs with a view to have access to the benefits of the LLP. Further the Government of India has made an Endeavour to create a facilitating environment for entrepreneurs, service providers and professionals by bringing such hybrid business structure to meet the global competition.



## WHETHER AN APPLICATION UNDER SECTION 9 OF THE INSOLVENCY & BANKRUPTCY CODE, 2016 IS MAINTAINABLE AT THE INSTANCE OF WORKMEN ASSOCIATION?

Satwik Singh

Under Chapter II of The Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as the “Code”), the mechanism for the initiation of the Corporate Insolvency Resolution Process (hereinafter to be referred as “CIRP”) against the Corporate Debtor<sup>16</sup>, Financial Creditor<sup>17</sup>, Operational Creditor<sup>18</sup> has been provided for according to the provisions of Section 7, 9, and 10 of the Code respectively.

The law is still crystallizing the fact as to which entities can come under the respective categories for initiation of CIRP as mentioned above. For instance the case of Nikhil Mehta vs. AMR Infrastructure<sup>19</sup>, looked at the question of whether the flat buyers will come under either of the two categories viz. Operational Creditors or Financial Creditors, in the case of D Ramjee vs. Aruna Hotels<sup>20</sup>, the Chennai bench of the Adjudicating Authority (hereinafter referred to as “NCLT”) looked into the question of whether individuals can approach the NCLT for initiating the CIRP against the employer over the non-payment of various salary dues.

Similarly the issue of whether an application under Section 9 of the Code will be maintainable at the instance of Workmen Association was raised in the case of J.K.Jute Mills Mazdoor Morcha vs. Juggilal Kamlatpat Jute Mills Co. Ltd<sup>21</sup> before the Appellate Authority (hereinafter referred to as the “NCLAT”). The said matter arose out of an appeal against the order dated 28<sup>th</sup> April 2017 passed by the Allahabad bench of the NCLT,

wherein the application preferred by the Appellant/ Workmen Association under Section 9 of the Code had been dismissed despite the fact that in the impugned order, the NCLT had accepted the contention that the Corporate Debtor cannot deny the liability for making payments of workmen’s wages.

In the present appeal the appellants had approached the NCLAT on the grounds that they fall under the meaning of operational creditors under Section 5(20) of the Code since the Corporate Debtor owed operational debt to its workmen and employees in respect of services including employment as per sub section (21) of Section 5 of the Code, the appellants also contended that the Trade Union is a ‘person’ as defined under the provisions of sub section (23)(g) of the Trade Union Act read with Section 5(20) and (21) of the Code, and hence the petition is maintainable under the Code.

On the other hand, it was the contention of the respondent that the appellants’ application under Section 9 of the Code is not maintainable as no ‘operational debt’ as envisaged under the provisions of sub-section (2) of Section 5 of the Code was owed and further they also contended that upon reading of sub-section (20) of Section 5 along with Form 5 of Insolvency & Bankruptcy (Application to Adjudicating Authority Rules) 2016, (hereinafter referred to Adjudicating Authority Rules), it becomes clear that the application under Section 9 can only be filed by an ‘operational creditor’, that is an individual workman himself or the person which has been specifically authorized to act on behalf of the workmen, the implication of this fact is that since the Appellant here is a Trade Union, it will lack the authority to issue the demand notice and subsequently file the insolvency application under the Code. The Respondents went on to contend further that there is a pre-existing dispute prior to the filing on Section 9 application in the form of a pending civil suit before the Delhi High Court, and in that regard, the case of Kirusa Software Pvt. Ltd. vs. Mobilox Innovations

<sup>16</sup> “corporate debtor” means a corporate person who owes a debt to any person

<sup>17</sup> “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

<sup>18</sup> “operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred

<sup>19</sup> Company Appeal (AT) (Insolvency) No. 7 of 2017, Order dated 21.07.2017

<sup>20</sup> Company Appeal (AT) (Insolvency) No. 59 of 2017, Order dated 02.08.2017

<sup>21</sup> Company Appeal (AT) (Insolvency) No. 82 of 2017





Pvt Ltd<sup>22</sup>. becomes applicable which had held that in the event that there exists a dispute, the application under Section 9 will not be maintainable. Further the respondents also relied on the case of Smart Timing Steel Ltd. vs. National Steel and Agro Industries Limited<sup>23</sup> which stated that the submission of certificate from any Financial Institution is mandatory for filing the application under Section 9 and that the same was not provided by the appellants.

*default such individual workman/ employee can prefer an application under Section 9 giving details of debt and date of default but it should not be less than one lakh rupees in view of Section 4 of the I&B Code.”* This case apart from stating that Trade Unions and workmen association cannot file their application under Section 9 of the Code, also further sheds light on the fact that employees can initiate CIRP against their employers if the operational dues are more than Rs One Lakh.

## CONCLUSION

The NCLAT, after going through the contentions of both the parties, examined the Code to ascertain whether a Trade Union will come under the meaning of ‘operational creditor’, and in that regard, the definition of ‘Operational Debt<sup>24</sup>’ as defined under sub-section(21) of Section 5 was examined to ascertain who can claim to be ‘Operational Creditor’ . The NCLAT concluded that the following can come under the definition of Operational Creditors:-

1. *“The person who has claim in respect of provision of goods (supplied) to the ‘corporate debtor’;*
2. *Persons who have provided services to the ‘corporate debtor’; including those who are in employment; and*
3. *Central Government, State Government and Local Authorities, who are entitled to claim debt in respect of dues arising under any Law for time being in force.”*

Based on the above mentioned criteria, it was held that any Trade Union or any association of workmen cannot come within the definition of ‘operational creditor’ as no services were rendered by the workmen’s association/ trade union to the Corporate Debtor and thereby no due that could have been termed as, “debt” as defined under sub-section 11 of Section 3 could be ascertained. However the NCLAT at the same time also held that *“it does not mean that an application under Section 9 of I&B Code is not maintainable at the instance of an individual employee/workman who has rendered services to the ‘corporate debtor’ and if there is debt and*

<sup>22</sup> *Company Appeal (AT) (Insolvency) 6 of 2017*

<sup>23</sup> *Company Appeal (AT) (Insolvency) No. 28 of 2017*

<sup>24</sup> *“operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*



# OPERATING AGREEMENTS – RELEVANCE FOR A START-UP VENTURE

Harsimran Singh

## INTRODUCTION

An *operating agreement* is an important piece of document as it not only outlines the financial and functional decisions of a business including rules, regulations and provisions but also the contractual relationships at the helm of affairs.

The purpose of an operating agreement is to lay governance of the internal operations of a business in a manner that is in tandem with the specific needs of the business owners. Once signed by interested parties, it acts as an official contract binding them to its terms.

An operating agreement is highly recommended for multi-member business ventures because it channelizes and structures such venture's resources, functions, finances and organization, and renders governing rules for smooth operation of the business.

Main components in an operating agreement generally include percentage of interests, allocation of profits and losses, member's rights and responsibilities etc.

Accordingly, operating agreements for a start-up venture are devised to protect the rights & interests parties creating such business venture with the aim to dwindle personal liability and mitigate legal impediments.

## KEY ISSUES DEALT WITH UNDER A START-UP OPERATING AGREEMENT

- Finances (capital contribution<sup>25</sup>),
- Business procedures,
- Operating structures and ownership percentages,
- Voting rights,

- Roles, responsibilities and operating procedures
- Individual / functional responsibilities,
- Powers and duties,
- Profit distribution,
- Loss distribution,
- Confidentiality,
- IPR
- Meeting schedule,
- Termination & consequences,
- Buyout stipulations,
- Buy-sell rules, etc.

It is not necessary that an operating agreement has to run into thousands of pages; however, it must be meticulously drafted to comprehensively incorporate the understanding of the interested parties qua above note issues. The length and complexity of an operating agreement is subject to size of business, plan, and industry. As rightly said, *the more you sweat in peace, the less you bleed in war*. Therefore, while drafting an operating agreement, the document needs to define the stake holder's roles, responsibilities and operating procedures.

*Case study:* In September 2016, a bitter, year-and-a-half-long lawsuit between the founders of Snapchat finally came to a close. Business Insider reported that co-founder Reggie Brown, who came up with the concept for the timed photo-sharing app but wasn't given equity for his work, received a settlement from the two co-founders who ousted him from their startup. Had the Snapchat team set up an operating agreement prior to launch, they might have been able to avoid this costly legal snafu.<sup>26</sup>

<sup>25</sup> Capital can take the form of cash, property, both tangible and intangible, as well as services. It is extremely important to have a record of who contributed what on day one.

<sup>26</sup> <http://www.businessinsider.in/The-alleged-betrayal-described-in-these-photos-texts-and-emails-cost-Snapchat-158-million/articleshow/56955306.cms>



It is to be borne in mind that certain documents (core legal documents) are of paramount importance and must be in place for a start-up venture, namely:

1. **Operating Agreement (Founder's Agreement):** To avoid any conflict among founding parties, all co-founders should sign a comprehensive operating agreement. The agreement should define the relationship of the founders and should narrate the expectation that all work will belong to some entity in the future; accordingly outline a basic communication and conflict-resolution clause that can help prevent disputes;
2. **Bylaws:** These are internal rules of the venture and may include policy framework regarding issues such as disputes settlement, leadership selection & determination of rights/powers of shareholders, voting rights etc.;
3. **Articles of Incorporation:** this document is to detail the business structure;
4. **Intellectual Property (IP) Assignment Agreement:** For devising guiding principles for valuation, ownership, assignment of IP assets/portfolio. There could be two types of IP assignment agreements to consider: (i) *Technology Assignment Agreements* assign startups any intellectual property created before forming the company. Developers may in certain instances retain individual IP ownership rights, or they may sell their rights in exchange for equity or cash; and (ii) *Invention Assignment Agreements* assign the new company IP ownership of any relevant work product created by employees after the company's formation. A confidentiality and invention assignment agreement is typically signed by founder(s) and employees. The venture should own all rights to the IP portfolio;
5. **Non-Disclosure Agreements:** To protect start-up venture by safeguarding founders and employees' ideas and intellectual property. An NDA should specify the following: definition of confidential information, handling of confidential information, ownership of such information (the company), disclosure, time period for which confidentiality will be maintained,

etc.

6. **Employee Contracts and Offer Letters:** For recording terms of employment (e.g., compensation, role responsibilities, working hours and grounds for termination), reporting structure, IP ownership of work, expectations, required commitments, share vesting, adherence to company policies (e.g., vacation days, paid time off structure, dress code), etc.
7. **Shareholder Agreements:** For determining (when there is private investment into the venture), the rights of shareholders including right to transfer shares, right of first refusal, redemption upon death or disability and shareholders' power to manage and run the startup venture etc.

It is highly recommended that terms relating to owner contributions; capital accounts; allocations of profits; losses and distributions; membership rights and voting with respect to matters affecting the company; management; disposition of ownership interest in the company in various instances; and other potential ownership-related disputes and circumstances are incorporated in the operating agreements. Be that as it may, in case the business operations have already commenced, it is never too late to put in place an operating agreement with retrospective effect. Also the owners / stakeholders need to explore possible future scenarios and establish procedure that should settle probable unwanted situations in a reasonable manner if they occur.



# RELAXATION FROM LABOR LAW COMPLIANCES FOR START-UP VENTURES

Harsimran Singh

The Ministry of Labour & Employment, with the sole aim to support & promote the *Start-Up ecosystem* and encouraging entrepreneurs in setting up new start-up ventures resulting in creation of employment opportunities, issued an advisory to the States/UTs/Central Labour Enforcement Agencies for a compliance regime based on self-certification and regulating the inspections under various Labour Laws.

The term *start-up* may be best explicated as a commercial enterprise which is an emerging business or industry aiming to meet a peculiar market requirement by way of building up a viable mode of business involving a novel product, service, process or a platform. In Indian scenario (keeping in mind the available compliance relaxations) a start has been defined as an entity (*working towards innovation, development, deployment or commercialization of new products, processes or services, driven by technology or intellectual property*) incorporated or registered in India not prior to seven years (for Biotechnology Startups not prior to ten years), and with annual turnover not exceeding rupees twenty-five crores in any preceding financial year. It has been further clarified that a start-up must not (i) be a business formed by splitting up, or reconstruction, of a business already in existence and/or (ii) register turnover for the previous financial years in excess of rupees twenty-five crores or completed seven years from the date of incorporation or registration.

As per directions issued by the Ministry, start-up ventures shall be allowed to self-certify compliance (*through the Startup mobile app*) with nine labor and environment laws. In case of the said nine labor laws, no inspections will be conducted for a period of three (03) years from the date of incorporation of the start-up venture. In other words, if start-up ventures furnish self-declaration for compliance of nine labor laws for the first year from the date of starting the start-up, no inspection under these labor laws, wherever applicable, will take place. For compliance of applicable environment laws, start-up ventures which fall under the 'white category' (as defined by the Central Pollution

Control Board or CPCB) shall be able to self-certify compliance and only random checks would be carried out in such cases.

Below is the list of the nine labor laws (along with brief note on its applicability & compliance required therein subject to state amendments) as included in the Ministry's advisory for exemption from compliance:

- 1) Industrial Disputes Act, 1947;  
An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes. The Industrial Disputes Act 1947 extends to the whole of India and regulates Indian labor law so far as that concerns trade unions. Every person employed in an establishment for hire or reward including contract labor, apprentices and part-time employees to do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, is covered by the Act. This Act though does not apply to persons mainly in managerial or administrative capacity, persons engaged in a supervisory capacity and drawing > 10,000 p.m. or executing managerial functions and persons subject to Army Act, Air Force and Navy Act or those in police service or officer or employee of a prison. The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.  
The laws apply only to the organized sector. Chapter V-B, introduced by an amendment in 1976, requires firms employing 300 or more workers to obtain government permission for layoffs, retrenchments and closures. A further amendment in 1982 (which took effect in 1984) expanded its ambit by reducing the threshold to 100 workers. The Act also lies down:
  - a) The provision for payment of compensation to the workman on account of



closure or lay off or retrenchment.

- b) The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments
- c) Unfair labor practices on part of an employer or a trade union or workers.

2) Trade Unions Act, 1926;

An Act to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions. Its object is the protection and promotion of the interests of the working class.

3) Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996;

An Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto. Requires licensing of the principal employer along with annual reporting on construction workers employed.

4) Industrial Employment (Standing Orders) Act, 1946;

The Act requires employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to the workmen employed by them. It applies to every industrial establishment wherein one hundred or more workmen are employed or were employed on any day in the preceding 12 months.

The Software & IT industry in India had been exempt from complying with this Act for 11 years before the government withdrew the exemption in 2012. Now, all Software & IT companies which have more than 100 employees, fall under the ambit of this Act.

An industrial establishment is defined as: a) An industrial establishment as defined in clause (ii) of section 2 of the Payment of Wages Act 1936, b) a factory defined in clause (m) of section 2 of the Factories Act 1948, c) a railway as defined

in clause (4) of section 2 of Indian Railway Act 1890, d) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.

The various matters to be provided in the standing orders issued under this act include:

- a) Classification of workmen, e.g. permanent, temporary, apprentices, etc
- b) Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates
- c) Shift working
- d) Attendance & late coming
- e) Conditions of, procedure in applying for, and the authority which may grant leave and holidays
- f) Requirement to enter premises by certain gates, and liability to search
- g) Closing & reporting of sections of the industrial establishment, temporary stoppages of work and the rights & liabilities of the employer and workmen arising therefrom
- h) Termination of employment, and notice thereof to be given by employer and workmen
- i) Suspension or dismissal for misconduct, acts or omissions which constitute misconduct
- j) Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants
- k) Any other matter which may be prescribed

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;



An Act of the Parliament of India enacted to regulate the condition of service of inter-state laborers in Indian labor law. The Act's purpose is to protect workers whose services are requisitioned outside their native states in India. Whenever an employer faces shortage of skills among the locally available workers, the act creates provision to employ better skilled workers available outside the state. This Act makes provision for availing with the onsite services of interstate workers by the contractors / establishments to overcome only the temporary shortage of required skilled workers in a state. The purpose of this act is not to encourage interstate migration of workers against the interests of local workers as the principal employers would have to incur more cost in deploying interstate workers.

**Role of principal employers**

- a) Registration of all principal employers who employs or employed directly or indirectly five or more Interstate Migrant Workmen on any day of the preceding 12 months.
  - b) Maintain the registers indicating the details of interstate workers and make available for scrutiny by the statutory authorities.
  - c) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner and may be prescribed.
  - d) Principal employer shall be liable to bear the wages and other benefits to interstate workers in case of failure by the contractor to effect the same.
  - e) Liable for the prescribed punishments for violations committed under this Act.
- 5) Payment of Gratuity Act, 1972

Gratuity is a payment to be made to an employee upon the termination of her service, provided she has had a continuous service of 5 years or more. The employer has to pay gratuity at the rate of 15 days per year of service of the last

drawn salary, with the years of service rounded down to the nearest whole number. Gratuity is payable within 30 days of the last date of employment. As a prudent financial practice, establishments are supposed to provide for gratuity benefits on their balance sheets, at end of each financial year

6) Contract Labour (Regulation and Abolition) Act, 1970;

This act is to regulate the employment of contract labor in certain establishments and to provide for its abolition in certain circumstances. It is applicable to:

- (a) Every establishment in which twenty or more workmen are employed or were employed as contract labour on any day in the preceding 12 months
- (b) Every contractor who employees or employed twenty or more workmen on any day in the preceding 12 months
- (c) 3. The act doesn't apply to establishments in which work only of an intermittent or casual nature is performed:
- (d) If work is performed for more than 120 days in the preceding 12 months, then it is not classified as intermittent
- (e) If work is of a seasonal nature and is performed for more than 60 days in the preceding 12 months, then it is not classified as intermittent

In the context of this act, establishment means any place where an industry, trade, business, manufacture or occupation is carried out. Every principal employer of an establishment to which this Act applies shall, within the appropriate period, apply for registration with the registering officer. Once the registration has expired or been cancelled, the establishment cannot employ contract labor. The principal employer is responsible for adequately providing the following to the contract labor:

- (a) Canteens
- (b) Rest rooms & washing facilities
- (c) First aid facilities



(d) Timely and complete payment of wages

7) Employees' Provident Funds and Miscellaneous Provisions Act, 1952; and

This act provides for the compulsory contribution towards a fund for the future of an employee after his retirement. EPF contributions are to be done on a matching principle, with the employee contributing 12% of the basic plus dearness allowance towards the EPF account, matched by the employer making the same contribution. EPF contributions are mandatory for employees drawing less than Rs 15,000 per month

8) Employees' State Insurance Act, 1948

This Act is to provide certain benefits to employees in case of sickness, maternity and employment injury, and to make provisions for certain other matter thereto. ESI is applicable to any establishment/factory which employs 10 or more persons at any point of time. The ESI fund is made up of contributions from employer and employee, which are governed as per the following rules:

- a) Only to be done for employees whose monthly wages are Rs 15,000 or lesser
- b) Employer's contribution is 4.75% of the total wages, and employees' contribution is 1.75% of the total wages
- c) If the wages of an employee are less than Rs 100 per day, he/she is exempted from making employee contributions, but the employer has to continue making contributions

It has been directed in the Advisory that from the second year onwards, up to third year from the setting up of the units, the start-up ventures are required to furnish self-certified returns which will only be inspected if a credible / verifiable complaint of violation is filed in writing and approval has been obtained from the higher authorities.

It is to be borne in mind that the Advisory does not exempt start-up ventures from the ambit of compliance of above said labor laws but provides an administrative mechanism to regulate inspection of start-up ventures,

so that such ventures are motivated to be self-complied and fulfill adherence to the rule of law. Also, the exemptions serve as a gestation period for the young & new entrepreneurs to get accustomed to the labor laws and their implementing authorities and also to avoid harassment by restricting the discretion and arbitrariness.

It must be hoped that such benefits (*and many more to come*) do actually boost the start-up sector and the existing labor laws are molded further to address the issues of the present times and make provision for times to come.

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Note: *This document is not to be taken as an advice or a guide on the subject. It is merely a guiding document on various aspects to be complied with for a start-up venture. Further, any views included herein are that of the author personally. Please feel free to contact in case you have queries on the subject above.*



## LABOR & EMPLOYMENT LAWS – UPDATES

Harsimran Singh

### THE CODE ON WAGES 2017

To begin with, wages include salary, allowance, or any other component expressed in monetary terms and generally does not include bonus payable to employees or any travelling allowance, among others.

The Code on Wages, 2017 ('Wages Code')<sup>27</sup> was introduced in Lok Sabha by the Minister of Labour on August 10, 2017 seeking consolidation of laws relating to wages by replacing: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1949, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976.

The Wages Code shall be extended to establishments, including government establishments, where any industry, trade, business, manufacturing or occupation is carried out. The central government will make wage-related decisions for its authorities, and establishments related to railways, mines, and oil fields, among others whereas the state governments will make decisions for any other establishments.

### MINIMUM WAGE

Currently, due to restriction pertaining to scheduled employments / establishments, the provisions of the Minimum Wages Act and the Payment of Wages Act do not cover substantial number of workers. Keeping this in view the Wages Code shall ensure minimum wages to one and all and timely payment of wages to all employees irrespective of the sector of employment without any wage ceiling. In this regard, concept of statutory *National Minimum Wage* for different geographical areas has been introduced under the Wages Code which aims that no State Government fixes the minimum wage below the National Minimum Wages for that particular area as notified by the Central Government. The central government may fix different national minimum wage for different states or

<sup>27</sup> As part of labor law reforms, the Government has undertaken the exercise of rationalization of the 38 Labour Acts by framing 4 labor codes viz Code on Wages, Code on Industrial Relations, Code on Social Security and Code on occupational safety, health and working conditions.

geographical areas. The central or state governments will not reduce the minimum wages fixed by them, if these wages are higher than the national minimum wage.

The Wages Code requires employers to pay at least the minimum wages to employees, as notified by the central or state governments based on time, or number of pieces produced, among others. The Wages Code specifies that the central or state governments will review or revise the minimum wage every five years.

The Wages Code also provides for the central or state governments to fix the number of hours that will constitute a working day, providing for a day of rest for employees every week, overtime (*at least twice the normal wage of the employee*) for working beyond these working hours on any day.

Recently, some news reports published fixation of minimum wage as Rs. 18000/- per month by the Central Government. It was clarified by the Central Government that it did not fix or mention any amount as "national minimum wage" in the Code on Wages Bill 2017. It is to be borne in mind that the minimum wages will vary from place to place depending upon skill required, arduousness of the work assigned and geographical location. Further, the Wages Code on Wages Bill 2017, in the clause 9 (3), clearly states that the Central Government, before fixing the national minimum wage, may obtain the advice of the Central Advisory Board, having representatives from employers and employees. Notably, the Wages Code provides for a consultative mechanism before determining the national minimum wage.

### PAYMENT OF WAGES

Wages will be paid in (i) coins, (ii) currency notes, (iii) by cheque, or (iv) through digital or electronic mode. The wage period will be fixed by the employer as either: (i) daily, (ii) weekly, (iii) fortnightly, or (iv) monthly.

The Wages Code stresses upon payment of wages through cheque or digital/ electronic mode which would not only promote digitization but also extend





wage and social security to the worker. There is also introduction of provision of an Appellate Authority between the Claim Authority and the Judicial Forum which should address the issue of speedy, cheaper and efficient redressal of grievances and settlement of claims.

As per the Wages Code, an employee's wages may be deducted on certain grounds including: (i) fines, (ii) absence from duty, (iii) accommodation given by the employer, or (iv) recovery of advances given to the employee, among others. These deductions should not exceed 50% of the employee's total wage.

### PAYMENT OF BONUS

For determination of bonus, the Wages Code provides that the employer will pay each employee an annual bonus of at least: (i) 8.33% of his wages, or (ii) Rs 100, whichever is higher. Also, the employer will distribute a part of the gross profits amongst the employees (allocable surplus) which will be distributed in proportion to the wages earned by an employee during the year.

The Wages Code also envisages provision for maximum bonus payable which is a maximum bonus of 20% of wages of an employee (inclusive of any amount distributed as allocable surplus). It has been clarified and provided that in case the surplus exceeds the maximum bonus payable to all employees in a year; a certain amount will be carried forward to the following years (up to four years). And that the amount carried forward will not exceed 20% of the total wages payable to all employees during the year.

### OTHER KEY FEATURES

**Advisory Boards:** Such Boards will be constituted by the central and state governments at both central and state levels and will have representation from: (i) employees, (ii) employers, and (iii) independent persons. Further, one-third of the total members will be women. These advisory boards will be entrusted with the obligation to advise the respective governments on aspects such as fixation of minimum wages, increasing employment opportunities for women, etc.

**Offences & Penalties:** Further, penalties for different types of violations have been rationalized under the Wages Code, with the amount of fines varying as per

the gravity of violations and repeat of the offences. Provision of compounding of offences has been made for those which are not punishable by a penalty of imprisonment. The Wages Code specifies penalties for offences committed by an employer, such as (i) paying less than the due wages, or (ii) for contravening any provision of the Code. Penalties vary depending on the nature of offence, with the maximum penalty being imprisonment for three months along with a fine of up to one lakh rupees.

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### AMENDMENT TO RULE 69 OF THE CONTRACT LABOUR (REGULATION AND ABOLITION) CENTRAL RULES, 1971

The Ministry of Labour and Employment through its Notification dated September 5, 2017 being G.S.R. 1128(E) amended rule 69 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 (as required by section 35 of the Contract Labour (Regulation and Abolition) Act, 1970).

Below is the tabular representation of the amended provision before and after the amendment

Rule 69 (before amendment)	Rule 69 (after amendment)
All wages shall be paid in current coin or currency or in both.	<i>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 workman:</i>  <i>Provided that the appropriate Government may, by notification in the Official Gazette, specify the establishment or class of establishments, the employer of which shall pay to every workman employed in such establishment or class of establishments, the wages only by cheque or by crediting the wages in his bank account.</i>

Notably, the amendment has been brought about to include option of paying wages to the employee/workmen by cheque or by crediting the wages directly in the bank account of the workman.



This seems to have been done to bring about transparency in payment of wages to the workmen as this will put a check on any deviation from minimum wages payable.

Vide notification of the Government of India in the Ministry of Labour and Employment, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 257 (E), dated, the 17.03.17, invited objections and suggestions from all persons likely to be affected thereby before the expiry of thirty days from the date on which the copies of the Official Gazette containing the said notification were made available to the public. However, no comments/objections/suggestions were reported to have been received.



## LABOR & EMPLOYMENT LAWS – COMPLIANCES CHART

Sn.	Statute	Applicability	Liability	Compliance / Penalties
1	Contract Labour (Regulation & Abolition) Act, 1970 & the Rules	<p>Every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labor;</p> <p>Every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen.</p> <p>(Sec. 1)</p>	<p><u>Welfare measures to be taken by the Contractor</u> (Sec. 16 &amp; 17)</p> <ul style="list-style-type: none"> <li>Contract labor either one hundred or more employed by a contractor for one or more canteens shall be provided and maintained.</li> <li>First Aid facilities.</li> <li>Number of rest-rooms as required under the Act.</li> <li>Drinking water, latrines and washing facilities.</li> </ul> <p>Muster Roll, Wages Register, Deduction Register and Overtime Register to be maintained by the Contractor</p> <p><u>Liability of Principal Employer</u> (s.20)</p> <ul style="list-style-type: none"> <li>To ensure provision for canteen, restrooms, sufficient supply of drinking water, latrines and urinals, washing facilities.</li> <li>Principal employer entitled to recover from the contractor for providing such amenities or to make deductions from amount payable.</li> </ul>	<p>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</p> <hr/> <p><u>Registers</u></p> <ul style="list-style-type: none"> <li>Principal employer</li> <li>To maintain a register of contractor in respect of every establishment in Form XII.</li> <li>Contractor (Rule 74)</li> <li>To maintain register of workers for each registered establishment in Form XIII.</li> <li>To issue an employment card to each worker in Form XIV.</li> <li>To issue service certificate to every workman on his termination in Form XV</li> </ul> <p>(Rules 75, 76 and 77)</p> <hr/> <p><u>Penalty</u></p> <p>For obstructing the inspector or failing to produce registers etc. - 3 months' imprisonment or fine upto Rs.500, or both;</p> <p>For violation of the provisions of Act or the Rules, imprisonment of 3 Months or fine upto Rs.1000. On continuing contravention, additional fine upto Rs.100 per day</p>



2	<p>The Employees' Provident Funds and Miscellaneous Provisions Act 1952</p> <p><a href="http://www.epfindia.com/site_en/">http://www.epfindia.com/site_en/</a></p>	<p>Every establishment which is a factory employing 20 or more persons</p>	<p>While employees contribute <b>12%</b> of the basic pay to EPF, the employer contributes <b>8.33%</b> towards the employee's pension scheme and <b>3.67%</b> to the EPF itself.</p> <p>Employees also make matching <b>12%</b> contributions.</p> <p>Additionally, employers also pay <b>0.5%</b> towards EDLI, <b>0.65%</b> as EPF administrative charges and 0.01% as EDLI handling fee.</p>	<p>Registration with EPFO</p> <p>Not applicable for employees having monthly salary of more than Rs.15000/-</p> <hr/> <p><u>Damages for Delay</u> (s.14B r/w Para 32B of the Scheme</p> <hr/> <p><u>Penalty</u></p> <ul style="list-style-type: none"><li>• Liable to be arrested without warrants being a cognizable offence;</li><li>• Defaults by employer in paying contributions or inspection/administrative charges attract imprisonment upto 3 years and fines upto Rs.10, 000 (S.14);</li><li>• For any retrospective application, all dues have to be paid by employer with damages upto 100% of arrears.</li></ul>
3	<p>The Employees' State Insurance Act, 1948</p> <p><a href="http://www.esic.nic.in/index.php">http://www.esic.nic.in/index.php</a></p>	<p>Factories employing 10 or more persons</p>	<p>The rates are revised from time to time. Currently, the employee's contribution rate is <b>1.75%</b> of the wages and that of employer's is <b>4.75%</b> of the wages paid/payable in respect of the employees in every wage period.</p> <p><u>Contribution period:</u></p> <p>1st April to 30<sup>th</sup> September;</p> <p>1st October to 31<sup>st</sup> March</p>	<p>Registration with ESIC</p> <p>Not applicable for employees having monthly salary of more than Rs.21000/-</p> <p>An employer is liable to pay his contribution in respect of every employee and deduct employees contribution from wages bill and shall pay these contributions at the above specified rates to the Corporation within 15 days of the last day of the Calendar month in which the contributions fall due. The Corporation has authorized designated branches of the State Bank of India and some other banks to receive the payments on its behalf.</p>



4.	Factories Act, 1948	Any premises whereon 10 or more persons with the aid of power or 20 or more workers are/ were without aid of power working on any dyad preceding 12 months, wherein Manufacturing process is being carried on.	--	Registration with Chief Inspector of Factories on submission of prescribed form, fee and plan.
5.	Payment of Bonus Act, 1965	Every factory where in 10 or more persons are employed with the aid of power or An establishment in which 20 or more persons are employed without the aid of power on any day during an accounting year	An employee will be entitled only when he has worked for 30 working days in that year;  8.33% of the salary or Rs.100 (on completion of 5 years after 1st Accounting year even if there is no profit)	Employees drawing wages upto Rs.21000/- per month or less are only eligible.  For calculation purposes Rs.7000/- per month maximum will be taken even if an employee is drawing upto Rs.21000/- per month.
6.	Payment of Gratuity Act 1972	Every factory employing 10 or more employees	Wages for Calculation: @ 15 days' wages for every completed year as if the month comprises of 26 days at the last drawn wages;  Maximum Ceiling - Rs.3,50,000/-	Nodal authority - Labor Commissioner for the area  All employees irrespective of status or salary  Entitlement - On completion of five years' service except in case of death or disablement.  On rendering of 5 years' service, either termination, resignation or retirement



# BACKING UP YOUR START-UP BY HAVING AN IPR STRATEGY

Shrabani Rout

While developing a new idea as a product, innovators understandably invest a lot of time into the research and development of the product. They focus on building a business model, getting more and more investors to invest in the business and hoping that the product will gain an early traction in the market. What they forget is to have a sound Intellectual Property Protection in place before they launch their product into the market. Although people are now becoming increasingly aware about their IP rights, it is always advisable to have a sound IPR regime in place before launching products into the market.

Intellectual property refers to an invention resulting from creativity, such as new technology, brand, design, or literary and artistic works, to which exclusive rights are recognized. Because there are so many things involved in starting a business, most startup entrepreneurs will neglect to protect their intellectual property as it does not seem so important at the time. However to protect one's IP to the best of his ability, one has to identify which form of IP protection would be best suited for their ideas and products.

## TRADEMARK REGISTRATION

A new business usually has a brand name that is new and innovative in nature. The advice to the startup community is to trademark at least their name and logo in order to prevent others from ripping off the name of their company. A registered trademark will do this in two ways. First, the trademark will appear when other entrepreneurs conduct a trademark search. Secondly, if registering for a trademark fails to deter imitators then the startup at least has a sound legal argument in Court. Thirdly in a single brand or logo, trademarks can convey emotional attributes and messages about you, your company, and your company's reputation, products and services. Trademarks also act as an efficient commercial communication tool to capture customer attention and make the business, products and services stand out.

The Government has provided incentives to such startups to protect their trademarks by giving them a

50 percent discount in the official fees for filing a trademark application. For e.g. the official fees for filing an application for registration of a trademark of a start-up is Rs 5000 as opposed to Rs 10,000 that other enterprises have to pay. Further, the government has appointed start-up facilitators specifically for the prosecution of Trademarks application and will pay them out of their own pocket for helping Start-ups in the process of registration of trademarks.

## PATENT PROTECTION

Ideally, a startup should file for a patent at the earliest possible stage in the startup's evolution because patent protection is time-sensitive. A startup developing a new product should always apply for a patent for the product before launching it into the market. For once a technology becomes "public knowledge" before the startup files a patent application, it will not be awarded a patent because the invention will already be known to the public.

The Government has provided incentives to such startups to protect their products by giving them a 50 percent discount in the official fees for filing a patent application. For e.g. the official fees for filing an application for grant of a patent of a start-up is Rs 4000 as opposed to Rs 8,000 that other enterprises have to pay. Further, startups are also exempted from paying professional fees to legal counsels who file trademark applications on their behalf

## COPYRIGHT PROTECTION

The product/industry on which the startup is working on determines whether a copyright protection is needed or not. For instance, if it the startup is a software company, it is essential that the developer assesses whether it is susceptible copyright infringement or not. Also, whether the copyrighted software/product has a long shelf life or not has to be determined.<sup>28</sup> The answers to the aforementioned can help decide whether it is plausible to copyright the software or not. Although obtaining a copyright is not a costly affair, but it is always advisable to copyright the product if

<sup>28</sup> <https://bizztor.com/intellectual-property-rights-protection-for-startups/>



there is a threat to the commercial exploitation of the same.

## DOMAIN NAME PROTECTION

In this age of social media, a domain name is a must for any startup. A domain name is an easy-to-remember translation of an IP address, through which users can access information. By registering their brand name as a domain name, the startup can not only market their presence in the real world but also the digital world. Having a presence online ensures that the startup can reach all age groups including their target audiences and also make their products accessible from any part of the world. In India, domain names are treated at par with trademarks and therefore can also be protected as a trademark. If a registered trademark is adopted by any third party then the owner also has right under INDRP ICAAN policy to file for arbitration for the transfer of domain name similar to their trademark.

## TRADE SECRET PROTECTION

A trade secret is confidential know-how that has value to the success of a business. It is any information that can be used in the operation of a business and is sufficiently valuable to afford an actual or potential economic advantage over others. A startup in the nascent stage of business development should consider using non-disclosure agreements when discussing sensitive and confidential information with employees or third parties, to safeguard their IP.

## DESIGN PROTECTION

A design under the Designs Act, 2000 is defined as features of shape, aesthetics, configuration, pattern, ornament or composition of lines or colors applied to any article by any industrial process or means. The Act provides protection or registration right only to the designs that are aesthetic in nature and not dictated by a functional feature. All startups should apply for registration of all their designs well ahead of the launch of their business. Having a design protection protects the owner of the startup against another person creating a similar or identical design, even in overall impression, regardless of whether it was inspired by the registered design or created independently.

Further, startups are also exempted from paying professional fees to legal counsels who file design applications on their behalf.

## PLANT VARIETY PROTECTION

Plant varieties are protected under the Protection of Plant Varieties and Farmers Rights Act, 2001. Nowadays innovative startups such as Indigo Agriculture who create drought-resistant seeds coated with tiny microbes are on the rise. These startups should definitely protect their methods and modes of seed production and breeding in order to ward off infringing parties.

## CONCLUSION

A startup's intellectual property is one of its most valuable assets. Accordingly, a startup should develop a comprehensive strategy to use starting at the inception of its business to protect its intellectual property. Ignorance of law is no defense and same cannot be pleaded in case of IP rights as they provide time bound protection and hence it is imperative that IP rights must be secured at the first instance.



# ROLE OF IPR FOR START-UP IN INDIA

Aayush Sharma

## INTRODUCTION

Under the Make in India initiative, the Government of India launched the Scheme for Facilitating Start-Ups Intellectual Property Protection (SIPP) in January 2016. This scheme was initiated in an effort to reach out to start-ups, protect and promote their Intellectual Property Rights (IPR) and to encourage creativity and innovation among themselves. Any Start-ups registered under the DIPP and have obtained certificate of recognition, can avail patent filing on a reduced rate i.e. 50% less as compare to the other companies. In order to introduce the IP law and to provide the cost-effective assistance to the startup, the Government invited advocates and patent agents to sign up for the SIPP scheme. Consequently, several members of the IPR practicing community are now part of this scheme and registered themselves as "Facilitator".

Start-ups can avail a complete start-to-end array of services with the help of "Facilitator", including general advice, assistance in drafting complete/provisional applications, filing at IPO, preparing and filing responses to examination reports, appearing at hearings, contesting opposition and ensuring the final disposal of the IPR application. Under this scheme, when any Start-up filed their patent application with the help of appointed facilitator, then no fee shall be paid to the facilitator by that startup, except the official fee which is to be borne by the start-up only. The government has fixed the professional fee for the facilitator which is INR 10000 comprises of consultancy, searching, drafting and filing.

## APPLICABLE LAW UNDER PATENTS ACT, 1970 FOR START-UP

Under the SIPP scheme, the Government has implemented the Patent Amendment Rules, 2016, w.e.f. May 16 2016; now include the definition of startups under Rule 2(fb) and reads as:

"Start-up means an entity, where

- (i) more than five years have not lapsed from the date of its incorporation or registration;

(ii) the turnover for any of the financial years, out of the aforementioned five years, did not exceed rupees twenty-five crores; and

(iii) it is working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property:

Provided that any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered as a start-up.

Explanation: In calculating the turnover, reference rates of foreign currency of Reserve Bank of India shall prevail

According to the amended rules a "startup" is defined as a new company/LLP/registered Partnership firm; i) That has been founded not more than 5 years ago; ii) That does not have a turnover of more than INR 25 crores i.e., approximately USD 3,850,000 in any financial year, in the last 5 years' time, and iii) That is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property. Further, the Start-up are also provided with the three year tax holiday

## FEES UNDER PATENTS ACT, 1970 FOR START-UPS

The Government has provided incentives to such startups to protect their patents by giving them 50 percent discount in the official fees for filing a patent application. For e.g. the official fees for filing an application for a patent by start-up is Rs 4000/- as compared to Rs 8,000 that other than natural person 'ONP' have to pay. Another provision which has been introduced in the Patents law is the 'express examination' for Start-up. By paying a slightly higher fee as compare to regular examination, Start-up can expedite the patent process and reduce the patent grant time from 4-5 years to approximately 2 years. It is one of the major advantage for start-up in getting the patent in a very short span.





## CONCLUSION

Having a patent is now of utmost important for an inventor. When any startup who worked in the field of research and innovation development is more prone to the risk of infringement and if their novel invention got infringed, may cause a huge loss. To protect and to foster the protection among the startup, a patent for an invention is must. With this goal and an objective of up-liftment of the research and development in the country, government has launched the SIPP scheme and increasingly more and more startup is now being a part of this scheme. Currently there are about 2000 startup has registered themselves under SIPP scheme and availed the patent protection. In a recent move, the government has introduced another platform with the Israel where startups, research teams, etc., can share their innovation in the areas of agriculture, water and digital health. The most promising proposals will have the chance to cash prizes, a bilateral market access seminar in Israel and an opportunity to pilot with leading partners in India.

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