

15 CHAPTER

Identifying Laws applicable to Various Industries and their Initial Compliances

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15.1 Introduction

- ◆ Under the transforming move of vision New India 2022, India is venerating an emerging market, registering itself as one of the biggest and fastest growing economies in the world. According to various reports, India is cited as having the potential to become the third largest economy in the world in the coming 30 years, behind only China and the USA. Keeping in pace with the contemporary global market and emerging stand of Indian economy, government initiated various flagship programs to boost the entrepreneurship environment in the country.
- ◆ Few of the major flagships including "Make in India" coupled with "Ease of Doing Business in India", "Skill India", "Digital India", etc., were started to build the interest and ease among various domestic and overseas stakeholders to set up and advance entrepreneurship in India.
- ◆ When the entrance and advancement to Indian business market would be of ultimate fortune than there are various laws which need to be abided for successfully setting up and taking forward an enterprise in India.

15.2 Formalizing and Deciding the Business Structure

- ◆ The foremost requirement for setting up this business is to understand and decide what kind of business venture it would be.
Example: If it's a company, it would be governed under Companies Act, 2013; in case of Partnership, the Partnership Act, 1932 would be applicable; if it is an MSME, the MSME Act, 2006 would come into picture. It shows that there is a plethora of laws which need to be complied with the respective form of businesses. Therefore, the first thing for starting any business is to determine the nature and type of the business.
- ◆ Founders need to incorporate the business as a specific business type - sole proprietorship, private limited, public limited, partnership, limited liability partnership, etc. It is very essential to have this clarity at the very beginning as this will be integral to the business' overall vision and goals, both short term and long term.
- ◆ Each business type comes with its own set of legal requirements and regulations and businesses should pay special attention to them before they are incorporated or registered.

Question For Practice

Ques 1: The foremost requirement for setting up this business is to understand and decide what kind of business venture it would be. Comment.

Hint: Refer Topic 15.2 Formalizing and Deciding the Business Structure.

15.3 Legal implications for the major business types in India—Insight

Legal Details	Business Type				
	Proprietor-ship	Partnership	Limited Liability Company (LLP)	Public/Pri- vate Limited Company	One Person Company
Registration	No formal registration required.	Registration is optional.	Has to be registered with the Ministry of Corporate Affairs under the LLP Act, 2008.	Has to be registered with the Ministry of Corporate Affairs under the Companies Act, 2013.	
Legal Status	Not recognised as a separate entity and promoter is personally responsible for all liabilities.	Not recognised as a separate entity and promoters are personally responsible for all liabilities.	Is a separate legal entity. The promoters of the LLP are not personally liable towards the LLP.	Is a separate legal entity. The promoters of the company are not personally liable towards the company.	Is a separate legal entity.
Members' liability	Unlimited liability	Unlimited liability	Limited liability to the extent of contribution towards to the LLP.	Limited Liability to the extent of share capital or the amount of guarantee undertaken, unless the company is an unlimited company.	Limited Liability to the extent of share capital or the amount of guarantee undertaken, unless the company is an unlimited company.
Number of members required	Can only have one person	Minimum of two persons required to start a Partnership.	Minimum of two persons required to start a LLP.	Minimum of two persons required to start a Private Limited Company, seven persons for a public limited company.	One person is required to start One Person Company.
Transferability	Not transferable	Not transferable	Ownership can be transferred	Ownership can be transferred by means of share transfer.	
Taxation	Taxed as individual, based on total income of proprietor.	Partnership profits are taxed as per the slabs provided under Income-tax Act, 1961	LLP profits are taxed as per the slabs provided under Income-tax Act, 1961 plus surcharge	Profits of both public limited company and Private Limited Company are taxed as per the provisions of the Income-tax Act, 1961.	Profits of One Person Company are taxed as per the provisions of the Income-tax Act, 1961.

		plus surcharge and cess as applicable.	and cess as applicable.	slabs provided under Income-tax Act, 1961 plus surcharge and cess as applicable.	annual audit (i) dependent to 60 (ii) notified (iii) various stages (iv)
Annual Statutory Meeting	No requirement for annual statutory meetings.	No requirement for annual statutory meetings.	No requirement for annual statutory meetings.	Board and General Meetings should be conducted periodically.	
Annual filings	No requirement to file annual report with the Registrar of Companies. Income tax to be filed on the income of the proprietorship.	No requirement to file annual report with the Registrar of Companies. Income tax to be filed for the partnership.	Must file Annual Statement of Returns & Solvency and Annual Return with the Registrar every year. Tax returns must also be filed annually.	Must file Annual Statement of Returns and Annual Return with the Registrar every year. Tax returns must also be filed annually.	
Existence or survivability	Proprietorship existence is dependent on proprietor.	Partnership existence is dependent on partners. Can be dissolved at will or upon on the death of partner(s).	Existence not dependent on partners. Can be dissolved voluntarily or by order of the Company Law Board.	Existence not dependent on directors or shareholder. Can be dissolved voluntarily or by Regulatory Authorities.	
Foreign ownership	Foreigners are not allowed to be sole proprietors.	Foreigners are not allowed to be part of a partnership.	Foreigners are allowed to invest with/without the approval of RBI and other applicable permissions for the relevant Government of India authorities depending on the category of business they are interested to invest.	Foreigners are allowed to invest with/without the approval of RBI and other applicable permissions for the relevant Government of India authorities depending on the category of business they are interested to invest.	

QUESTION

Ques. 1: Harischander wants to start a manufacturing business but he is not able to decide on the form of business (Type of Business Entity). He seeks your advice about the legal implication and requirements for the various business forms in India on the basis of following parameters.

(i) Registration

(ii) Members liability**(iii) No. of members required****(iv) Taxation****(v) Legal status**

Hint: Refer Topic 15.3 Legal implications for the major business types in India—Insight.

15.4 Applying For Business Licenses

- ◆ Licenses are integral to run any business. Depending on the nature and size of business, several licenses are applicable in India. Knowing the applicable licenses for the enterprises and obtaining them is always the best way to start a business.
- ◆ The lack of relevant licenses can lead to costly lawsuits and unwanted legal battles. Business licenses are the legal documents that allow a business to operate while business registration is the official process of listing a business (along with relevant information) with the official registering authority.
- ◆ The common license that is applicable to all businesses is the Shop and Establishment Act which is applicable to all premises where trade, business or profession is carried out. Other business licenses vary from industry to industry.

Example: An e-commerce company may require additional licenses like GST Registration, Professional Tax etc. while a restaurant may require licenses like Food Safety License, Certificate of Environmental Clearance, Prevention of Food Adulteration Act, Health Trade License etc. along with the above-mentioned licenses.

Understanding Taxation and Accounting Laws:

- ◆ Taxes are part and parcel of every business. Different business and operating sectors attract different taxes and knowing this beforehand can prove to be useful.
- ◆ A start-up can avail income tax exemption for a period of 3 years as well as tax exemptions from capital gains and investments above Fair Market Value.
- ◆ The conditions that start-ups need to qualify in order to leverage these exemptions are:
 - start-up should not be more than 7 years old (or 10 years for biotech) from the date of incorporation.
 - is incorporated as a Registered Partnership, Limited Liability Company or Private Limited Company.
 - turnover in any year should not have exceeded 25 crores.
 - start-up should not have been formed by splitting or reconstructing an existing business.

However, an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup'.

Example: The Government of India launched the 'Start-up India' initiative to promote start-ups and introduced many exemptions and tax holidays for start-ups and new businesses. According to this initiative.

Recognition As Start-up: The process of recognition of an eligible entity as start-up shall be as under:

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

Note: An entity shall cease to be a Start-up on completion of ten years from the date of its incorporation/ registration or if its turnover for any previous year exceeds one hundred crore rupees.

Adhering to Labour Laws:

- ◆ Adhering to labour laws are integral to every organization small or big.
- ◆ Some major labour laws applicable under this scheme are:
 - The Industrial Disputes Act, 1947
 - The Trade Union Act, 1926
 - Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996
 - The Industrial Employment (Standing Orders) Act, 1946
 - The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
 - The Payment of Gratuity Act, 1972
 - The Contract Labour (Regulation and Abolition) Act, 1970
 - The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
 - The Employees' State Insurance Act, 1948.

Having a well-designed employee policy can be a major differentiator for new companies to set up and advance well. An attractive employee policy can be the key to attract and retain good talent. Employee policies can also prove to be the starting point for boosting employee morale and increasing productivity.

Adherence to Laws relating to Intellectual Property:

- ◆ Intellectual property is vital for most businesses in the contemporary regime of knowledge and innovation, especially for tech centric businesses. Codes, algorithms and research findings among others are some of the most common intellectual property owned by organizations. Therefore, one has to ensure strict adherence to the Laws relating to Intellectual Property in India as well as of International Application to which India is a signatory.
- ◆ For the effective implementation of the IP Laws, facilitators have been empanelled by the Controller General of Patents, Trademarks and Design. Such facilitators help the new enterprises in setting up their business under the vigil of IPRs by providing advisory services, assisting in patent filing and disposal of patent application among other services at a minimum charge.

Ensuring Effective Contract Management :

- ◆ Contracts lie at the crux of running any business. A contract is required to ensure the smooth functioning of work and is a great mechanism to ensure recourse in case of non-fulfilment of work. Having basic knowledge about various aspects of contract management can prove to be useful for entrepreneurs. As per the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration with a lawful object, and are not expressly declared to be void.
- ◆ Employee contracts are one of the most crucial aspects to be looked into while starting a venture. Founders many a time collaborate with their own trusted circle of friends in the beginning and while this ensures a certain ease and efficiency to business operations, outlining and formalizing employee contracts with details about salary, scope of work and stock options (if any) with even your first few employees is always recommended. Having this clarity from the very beginning helps the new businesses to reduce risks at a later point in time.
- ◆ In the early stage of operations and post operation too, there are various contracts that a company has to abide by. Therefore, the adherence to contract law is one of the most important requirement for the company.

Details about winding down the business:

When a company decides to shut down, all the stakeholders from vendors to employees to customers and investors need to be informed in advance and the whole process must be properly planned and executed in order to make the exit easy on everyone. It is the last stage of existence of a company and all its assets are used to pay off the creditors, shareholders and other liabilities.

Questions For Practice
Ques. 1: Adhering to Labour laws is integral to every organization, small or big. Explain.
<i>Hint: Refer Topic Adhering to Labour Laws.</i>
Ques. 2: Discuss the process of recognition of an eligible entity as start-up?
<i>Hint: Refer Topic Recognition As Start-up.</i>
Ques. 3: Write Short Note On: "Adherence to Laws relating to Intellectual Property."
<i>Hint: Refer Topic Adherence to Laws relating to Intellectual Property.</i>

15.5 Laws Relating to Industries and Industries in Specific

The Factories Act, 1948	<ul style="list-style-type: none"> ◆ This law is the umbrella legislation enacted to regulate the working conditions in factories. ◆ The act is administered by the Ministry of Labour and Employment through its Directorate General Factory Advice Service & Labour Institutes (DGFASLI) and by the State Governments through their factory inspectorates. ◆ Institute also serves as a technical arm to assist the Ministry in formulating national policies on occupational safety and health in factories and docks. ◆ According to the Act, a 'factory' means "any premises including the precincts thereof: <ul style="list-style-type: none"> ■ whereon 10 or more workers are working/were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power/is ordinarily so carried on; or ■ whereon 20 or more workers are working/were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on without the aid of power/ is ordinarily so carried on but this does not include mine subject to the operation of the Mines Act, 1952/a mobile unit belonging to the armed forces of the union, a railway running shed/ a hotel/ restaurant/eating place."
The Plantation Labour Act, 1951	<ul style="list-style-type: none"> ◆ This Act is enacted to provide for the welfare of plantation labour and regulates the conditions of work in plantations. ◆ The Act is administered by the Ministry of Labour through its Industrial Relations Division. ◆ It works in close co-ordination with the Central Industrial Relations Machinery (CIRM) in an effort to ensure that the country gets a stable, dignified and efficient workforce, free from exploitation and capable of generating higher levels of output. ◆ According to the Act, the term 'plantation' means "any plantation to which this Act, whether wholly or in part, applies and includes offices, hospitals, dispensaries, schools, and any other premises used for any purpose connected with such plantation, but does not include any factory on the premises to which the provisions of the Factories Act,1948 apply".
The Mines Act, 1952	<ul style="list-style-type: none"> ◆ The Mines Act, 1952 contains provisions for measures relating to the health, safety and welfare of workers in the coal, metalliferous and oil mines. ◆ The Act is administered by the Ministry of Labour and Employment through the Directorate General of Mines Safety (DGMS). ◆ DGMS is the Indian Government regulatory agency for safety in mines and oil-fields. It conducts inspections and inquiries, issues competency tests for the purpose of appointment to various posts in the mines, organises seminars/conferences on various aspects of safety of workers.

	<ul style="list-style-type: none"> ◆ According to the Act, the term 'mine' means "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes all borings, bore holes, oil wells and accessory crude conditioning plants, shafts, opencast workings, conveyors or aerial ropeways, planes, machinery works, railways, tramways, slidings, workshops, power stations, etc. or any premises connected with mining operations and near or in the mining area."
The Shops and Establishments Act, 1953	<ul style="list-style-type: none"> ◆ Shops and Establishments Act, 1953 was enacted to provide statutory obligation and rights to employees and employers in the unorganised sector of employment, i.e. shops and establishments. ◆ It is applicable to all persons employed in an establishment with or without wages except the members of the employer's family. ◆ It is a State legislation and each State has framed its own rules for the Act. ◆ State Government can exempt either permanently/for a specified period, any establishments from all or any provisions of this Act. ◆ The Act provides for compulsory registration of shop/ establishment within 30 days of commencement of work and all communications of closure of an establishment within 15 days from its closing. ◆ Also, the hours of work per day and week as well as the guidelines for spread-over, rest interval, opening and closing hours, closed days, national and religious holidays, overtime work etc.
The Motor Transport Workers Act, 1961	<ul style="list-style-type: none"> ◆ The Act was enacted to provide for the welfare of motor transport workers and to regulate the conditions of their work. ◆ It applies to every motor transport undertaking employing five or more motor transport workers. ◆ State Government may after giving notification in the Official Gazette apply all or any of the provisions of this Act to any motor transport undertaking employing less than five motor transport workers. ◆ Every employer of a motor transport undertaking to which this Act applies shall have the undertaking registered under this Act. No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week. ◆ Also, no adolescent shall be employed or required to work as a motor transport worker in any motor transport undertaking for more than six hours a day including rest interval of half-an-hour and between the hours of 10 P.M. and 6 A.M. ◆ According to the Act, 'motor transport undertaking' means "an undertaking engaged in carrying passengers or goods or both by road for hire or reward and includes a private carrier".
The Contract Labour (Regulation & Abolition) Act, 1970	<ul style="list-style-type: none"> ◆ This Act is enacted to regulate employment of contract labour so as to place it at par with labour employed directly, with regard to the working conditions and certain other benefits. ◆ The Act is implemented both by the Centre and the State Governments. ◆ Contract labour refers to "the workers engaged by a contractor for the user enterprises". These workers are generally engaged in agricultural operations, plantation, construction industry, ports & docks, oil fields, factories, railways, shipping, airlines, road transport, etc. ◆ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was enacted to protect the rights and safeguard the interest of migrant workers. The Act intends to regulate the employment of inter-state migrant workmen and to provide their conditions of service.

	<ul style="list-style-type: none"> ◆ The responsibility for enforcement of the Act in establishments where the Central Government is the appropriate Government lies with the office of the Chief Labour Commissioner (Central) and for the establishments located under the States sphere lies with the respective State Governments.
Labour Welfare Funds for Social Assistance To Workers	<ul style="list-style-type: none"> ◆ Funds are aimed to provide housing, medical care, educational and recreational facilities to workers employed in beedi industry, certain non-coal mines and cine workers. Such funds are financed out of the proceeds of cess levied under respective Cess/Fund Acts. ◆ The various legislation so enacted include: <ul style="list-style-type: none"> ■ Mica Mines Labour Welfare Fund Act, 1946 was enacted to provide for constitution of a fund for financing the activities which promote welfare of labour employed in the mica mining industry. ■ The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 was enacted to provide for the levy and collection of a cess on limestone and dolomite for financing the activities which promote the welfare of persons employed in the limestone and dolomite mines. ■ The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Fund Act, 1976 was enacted to provide for financing the activities which promote the welfare of persons employed in the iron ore mines, manganese ore mines and chrome ore mines. ■ The Beedi Workers Welfare Fund Act, 1976 was enacted to provide for financing the measures which promote the welfare of persons engaged in beedi establishments. ■ The Cine Workers Welfare Fund Act, 1981 was enacted to provide for financing the activities which promote the welfare of certain cine-workers.
The Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996	<ul style="list-style-type: none"> ◆ This law was enacted to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures. ◆ The Act is applicable to every establishment which employs ten or more workers in any building or other construction work and to the projects costing more than Rs. 10 lakh. ◆ The Act contains provision for immediate assistance to the workers in case of accidents; old age pension; loans for construction of house; premium for group insurance; financial assistance for education, medical expenses and maternity benefits, etc. ◆ The Sales Promotion Employees (Conditions of Service) Act, 1976 was enacted to regulate certain conditions of service of sales promotion employees in certain establishments. ◆ The Act shall apply to every establishment engaged in the pharmaceutical industry. The Central Government may, by notification in the Official Gazette apply the provisions of this Act, to any other establishment engaged in any notified industry. ◆ Every employer in relation to an establishment shall keep and maintain such registers and other documents and in such manner as may be prescribed. ◆ According to the Act, the term 'sales promotion employees' means, "any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do include any such person: <ul style="list-style-type: none"> (i) who, being employed or engaged in a supervisory capacity, draws wages exceeding sixteen hundred rupees per mensem; or (ii) who is employed or engaged mainly in a managerial or administrative capacity".

Questions For Practice

Ques 1: Write Short Note On:

- (i) THE SHOPS AND ESTABLISHMENTS ACT, 1953.
- (ii) THE BUILDING & OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT & CONDITIONS OF SERVICE) ACT, 1996.

Hint: Refer Topic(s) The Shops And Establishments Act, 1953 and The Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996.

Ques 2: Write Short Note On: "THE MOTOR TRANSPORT WORKERS ACT, 1961".

Hint: Refer Topic THE MOTOR TRANSPORT WORKERS ACT, 1961.

Ques 3: Write Short Note On: "THE PLANTATION LABOUR ACT, 1951".

Hint: Refer Topic THE PLANTATION LABOUR ACT, 1951.