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India Startup Law & Policy Guidebook

2025



INTRODUCTION



India stands at an inflection point in its entrepreneurial evolution - a rapidly advancing startup economy supported by progressive policies. Initiatives such as Startup India, the Atal Innovation Mission, and state-led incubation and acceleration programmes have significantly broadened access to opportunity. Today, innovation is no longer confined to metropolitan hubs; it is taking root in smaller cities and even rural districts, making entrepreneurship a nationwide movement.

This growth, however, brings heightened responsibility. As more entrepreneurs take bold ideas to market, the ability to navigate India's legal and regulatory environment becomes essential for building ventures that are both resilient and compliant. Founders often confront complexities while making foundational choices such structuring their enterprise, understanding regulatory thresholds, managing workforce compliance, securing funding and protecting intellectual property. Without clarity at these early stages, startups can face avoidable hurdles that affect scalability, investment readiness, and long-term sustainability.

The **Startup Law Policy Guidebook** looks to bridge this critical knowledge gap. It serves as a practical resource for startup founders, ecosystem enablers and emerging business leaders. By distilling the most relevant legal and policy requirements into clear and actionable insights, the guide-book seeks to empowers entrepreneurs to make informed decisions from day one.

Beyond national-level frameworks, the guidebook also highlights state / region-specific policy reforms and support structures that can be utilised while expanding geographically. These include state-run accelerators, financial assistance programmes, and sector-focused incentives that enhance access to capital and operational support.

We hope it enables stronger compliance, sustainable growth and the creation of globally competitive enterprises that reflect India's ambitions for economic leadership.

Khaitan & Co Corporate and Commercial Group

FOREWORD



Entrepreneurship in India has always been anchored in ambition but today, it is matched by unprecedented opportunity. With over 1.59 lakh DPIIT-recognised startups, thousands of deep-tech ventures, and a growing footprint in Tier-II and Tier-III cities, India now hosts the world's third-largest startup ecosystem. These startups collectively contribute approximately USD 140 billion to the national GDP, driving nearly 15% of India's annual economic growth. This remarkable trajectory demonstrates the growing relevance of Indian startups both domestically and globally.

The vision of Prime Minister Narendra Modi for a "Viksit Bharat" underscores the government's commitment to transform young talent into global business leaders. This aligns perfectly with the reality that startups now represent a significant force across key industries from consumer internet and electric mobility to healthcare and financial inclusion.

India's startup workforce is also among the youngest worldwide, and over 45% of new founders emerge from non-metro India, highlighting the democratisation of innovation. However, ambition alone is insufficient in this rapidly evolving ecosystem.

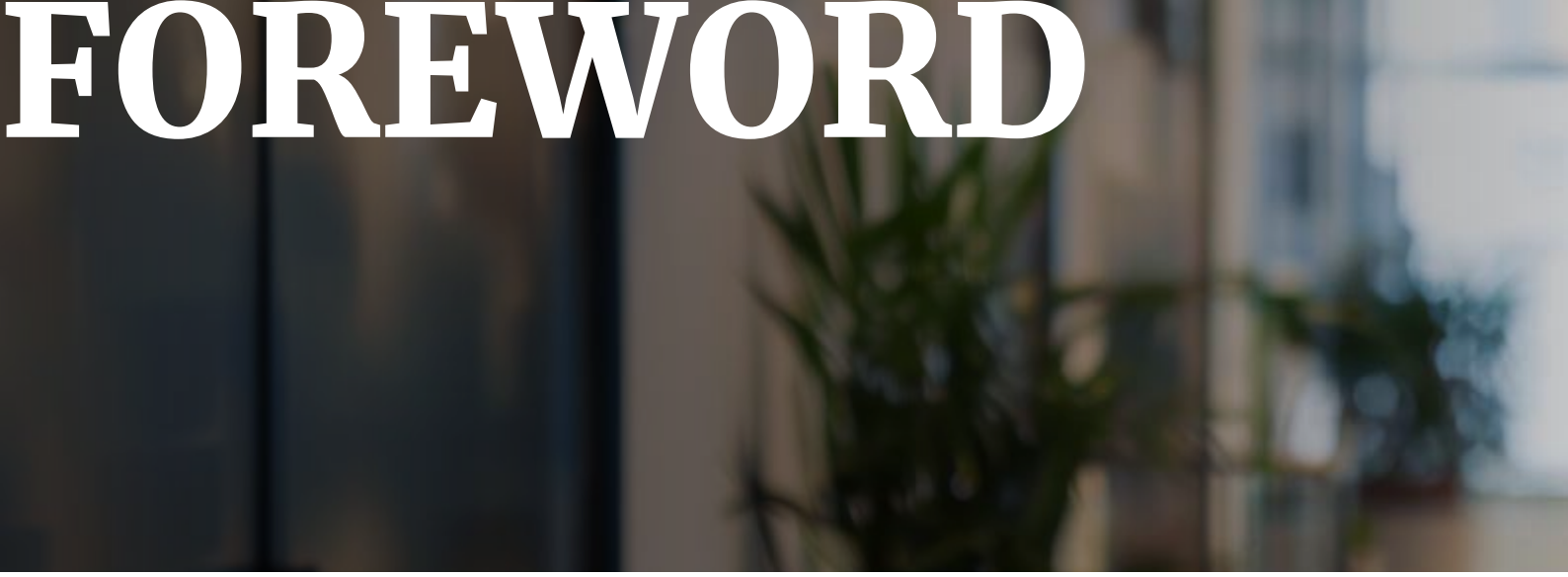
In an era shaped by relentless technological evolution and dynamic policymaking, the responsibility on young leaders to innovate responsibly and adapt rapidly is immense. Adopting strategic best practices and rigorous governance becomes fundamental for translating agile innovation into enduring impact, especially as cross-border capital inflows rise and market competition intensifies.

I am excited to introduce the "Startup Law Policy Guidebook" developed by Khaitan & Co and FICCI. This timely initiative is intended to empower India's next generation of entrepreneurs by providing a clear legal and strategic framework, equipping them to navigate complexities, mitigate risks, and build ventures founded on ambition and accountability.



Shashwat Goenka
Chairman, FICCI Young Leaders Forum and
Vice Chairman, RP Sanjiv Goenka Group

FOREWORD



Strong companies are built on strong frameworks; a truth every advancing economy eventually embraces. Today, India is home to more than 100 unicorns and aims to nurture 10,000 new startups by 2030. Startups today are not only engines of job creation and innovation; they are pivotal to India's emergence as a global powerhouse. In FY 2024–25, startups contributed nearly 17% of all private-sector employment growth and over 30% of new technology patents filed. Startup-led sectors are contributing double-digit growth in areas like fintech, EV, and health-tech. Indian founders have attracted one of the world's largest pools of venture capital in the last decade, with over USD 80 billion invested since 2015.

Despite a slight cooling in 2025, early-stage and AI-focused startups remain resilient, capturing significant investor interest. Mumbai has emerged as a leading capital hub, while Bengaluru leads in deal count. Around 60% of institutional investors have allocated upwards of 20% of their portfolios to AI-driven ventures, signaling strong confidence in India's tech innovation.

This robust investment climate reflects an ecosystem evolving beyond mere scale to sustainable, technologically advanced, and impact-driven enterprises. The guidebook provides essential legal and governance frameworks to help startups convert capital inflows into long-term value creation. FICCI remains steadfast in supporting entrepreneurs focused on purpose-driven growth, and we trust this guidebook will be a vital resource for every startup striving to build with both ambition and accountability.



Harsha V Agarwal
President, FICCI and Vice Chairman &
Managing Director, Emami Limited



The evolution of India's startup movement highlights that innovation flourishes where clarity, governance and opportunity intersect. What began as a fledgling ecosystem has today matured into a global force, powered by ambitious founders, future-focused capital and regulations that continue to adapt to the trends.

Startups have become catalysts for high-skill job creation, technology exports, foreign investment, sustainable and inclusive development as well as collaboration between government, industry & academia. As founders push boundaries across regulated and emerging sectors, their biggest enablers will be regulatory clarity, ease of doing business, and effective compliance adoption. A well-governed startup inspires investor trust, strengthens competitiveness and builds resilience - qualities required as India enters its next growth era.

India's reform-driven agenda, grounded in simplified tax frameworks, digitised processes, and strengthened intellectual property protections, reflects the nation's aspiration to become a USD 7 trillion economy by 2030. These efforts signal a clear direction, enabling entrepreneurship to thrive and scale efficiently.

As we stand at this important juncture, the mission is not only to build globally competitive startups, but to build those that set global standards. Ensuring that businesses are compliant, future-ready, and anchored in trust will be fundamental to this next phase of leadership. At FICCI, we remain committed to supporting India's entrepreneurial journey and the startup guidebook with Khaitan & Co is the first step towards the larger vision. We are confident that the readers will engage deeply with its recommendations and become proactive architects of a future-ready, inclusive business ecosystem.



Jyoti Vij
Director General, FICCI

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1

Setting up a Startup in India



Choosing the Right Legal Structure

Choosing the appropriate legal structure is a fundamental decision in the process of establishing a startup in India. Each structure offers distinct benefits and drawbacks in terms of liability, compliance requirements, capital contribution and taxation.

Structure Considerations



Sole Proprietorship

As the simplest type of business structure, it is owned and run by an individual. The features of a sole proprietorship, inter alia, include:

- **Ease of Establishment:** Low setup expense and minimal formalities. Certain local registrations (such as under the Shops & Establishments Act or municipal trade licence, as applicable) may be required depending on the nature and location of business.
- **Compliance Requirements:** As compared to other structures, there are fewer regulatory compliances, mainly limited to income tax filings.
- **Unlimited Liability:** The owner is personally liable for all business liabilities and debts since there is no distinction between the owner's personal assets and the business assets.



Partnership

If the startup is an idea of a few like-minded entrepreneurs, they may consider forming a partnership under Indian Partnership Act, 1932 (Partnership Act).

A partnership can be constituted by executing a deed of partnership to conduct any lawful business and to share profits in the manner mutually agreed. While registration is not mandatory, it is strongly advisable since unregistered firms cannot enforce contractual rights in court. The features of a partnership, inter alia, include:

- **Flexibility:** The partnership deed gives partners the flexibility to choose their contribution and profit-sharing arrangement.
- **Easy Management:** The structure offers the advantage of easy management and simple operation along with moderate compliance requirements under the Partnership Act.
- **Partner Remuneration and Taxation:** Remuneration payable to working partners of the firm is deductible as a business expense, provided the limits prescribed under Section 40B of the Income Tax Act, 1961 (IT Act) are met. The firm is subject to independent assessment under IT Act. However, the share of profit earned by a partner is free of Indian income tax.
- **Unlimited Liability:** A partnership firm is not an independent legal entity and exposes all partners jointly and severally for the firm's liabilities. Generally, partners contribute capital and share profits as per the partnership deed and similar to sole proprietorship, partners have unlimited personal liability.

Limited Liability Partnership (LLP)

As an alternative to the partnership firm structure, and if the partners desire to limit their personal liability they can consider setting up a limited liability partnership under the Limited Liability Partnership Act, 2008 (LLP Act). The features of an LLP, inter alia, include:

- **Limited Liability:** Liability of the partners is capped at the amount they have agreed to contribute to the LLP.
- **Legal Entity:** As a separate legal entity, an LLP can hold assets and enter into contracts in its own name.
- **Flexibility:** Partnership offers the same advantages for ease of formation and flexibility of contributing different resources towards partnership business. The profit share can be determined based on evaluation of contribution and participation.
- **Partner Remuneration and Taxation:** Similar to a partnership, remuneration payable to working partners of the LLP is deductible as a business expense, provided the limits prescribed under Section 40B of the IT Act are met. LLP is subject to independent assessment under IT Act. However, the share of profit earned by a partner is free of Indian income tax.

LLPs are often a preferred choice for startups at an early stage due to the simple registration process, fewer compliance requirements compared to private limited companies.

Further, migrating from an LLP to a private limited company on expansion is possible, subject to certain conversion rules with no major legal or tax ramifications, provided certain conversion rules are followed.

Private Limited Company (PLC)

This is the most popular structure among Indian startups for scalability and external funding and offers the following advantages:

- **Limited Liability:** It provides strong protection for personal assets by limiting shareholders' liability to the unpaid amount of shares they hold.
- **Separate Legal Entity:** Regardless of any change in ownership, a private company offers 'perpetual succession' and continuity as it is separate from its shareholders.
- **Member Limit:** A private limited company can have a maximum of 200 shareholders.
- **Restriction on transfer of shares:** The articles of association of a private company are required to provide restrictions on transfer of shares.
- **Correlation of Capital and Profit Take-away**: As opposed to LLP, the return on investment directly correlates with the percentage of shareholding in the company through dividends or capital gains. Such dividends are taxable in the hands of the shareholders at applicable slab or marginal tax rates, after deduction of tax at source under Section 194.



- **Capital Sourcing:** It is easier to obtain equity funding from venture capitalists, angel investors, and other institutional investors.
- **Compliance:** Governed by the Companies Act, 2013 (Companies Act), the burden of compliance is more, requiring statutory audits, board meetings, annual general meetings, and other filings with the Ministry of Corporate Affairs.
- **Credibility:** Increased business opportunities since it is seen as more reliable and trustworthy by vendors, investors, and consumers.

Along with the above-mentioned benefits, the Companies Act allows for several relaxed compliance requirements for 'small companies' which meet the paid-up capital and turnover requirements under the law.



One Person Company (OPC)

One Person Company is a hybrid structure that enables a single individual to establish a limited liability company with a separate legal identity. By essentially keeping personal and corporate assets distinct, the sole proprietor benefits from limited liability. The compliance requirements are fewer than a private limited company but more than a sole proprietorship.

An OPC can be converted into a private or public company. For the purpose of the conversion, minimum requirements related to number of members, capital and directors must be met in accordance with the Companies Act.

The startup founders need to bear in mind that for borrowings in a sole proprietorship, partnership firm or LLP, banks and financial institutions will look up to the founders for providing adequate collateral security of personal assets for due repayment of loans.



Public Limited Company

This structure is suitable for large-scale businesses that intend to raise capital from the public. A public company can also list on its shares and other securities such as debentures and bonds on recognised stock exchanges and raise funds from the public through Initial Public Offerings (IPOs).

A public company requires a minimum of seven members and three directors. Apart from this, there are extensive regulatory and disclosure requirements under the Companies Act and Securities Exchange Board of India (SEBI) regulations.

Key Tax Considerations in Selecting a Business Entity

Each legal structure in India is subject to varied tax regimes. Accordingly, in evaluating an appropriate legal structure for the Startup, the following tax aspects merits consideration:

Corporate Tax Rates

Generally, an Indian private limited company is liable to tax at the rate of 34.94%. If the Startup (which satisfies certain prescribed conditions) is engaged in eligible business i.e. innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation, it may claim tax holiday on the business income for 3 years, out of a block of 10 years, commencing the year of incorporation (Startup Tax Holiday). However, with effect from 1 April 2020, all the Indian companies have an option to elect for concessional tax rate of 25.17%, subject to foregoing certain prescribed tax incentives (including the Startup Tax Holiday).

On the other hand, an LLP is liable to a single corporate tax rate of 34.94% and it may claim the Startup Tax Holiday subject to satisfaction of prescribed conditions.

Minimum Alternate Tax (MAT) / Alternate Minimum Tax (AMT)

A Private Limited Company (PLC) is liable to minimum alternate tax (MAT) at the rate of 17.47% (including surcharges as applicable) on adjusted book profits if such amount is higher than tax payable under normal provisions, set out above. However, MAT is not applicable if the private limited company has opted for the concessional corporate tax rate of 25.17%.

An LLP is liable to AMT at the rate of 21.55% if it claims the Startup Tax Holiday and the AMT amount is higher than its regular tax liability.

Distribution of dividend by a company to its shareholders is taxable in the hands of the shareholders as per their income-tax rates applicable to them. The Startup has an obligation to deduct tax at source at 10% for Indian resident shareholders and 21.84% (including surcharges as applicable) for foreign stakeholders,, subject to any tax treaty benefit. Distribution of profit by the LLP to its partners is tax exempt.

Key Considerations	Private Limited Company (PLC)	Limited Liability Partnership (LLP)
Corporate Tax Rate	**General:** 34.94%. Tax holiday is allowed to an eligible Startup carrying on eligible business for 3 years, out of a block of 10 years commencing from the date of incorporation. **Concessional:** 25.17%. No tax holiday / incentives are allowed	Single tax rate of 34.94%, subject to tax holiday for eligible Startups.
MAT / AMT	MAT is applicable at approx. 17.47%, if such amount is higher than tax payable at 34.94% under general provisions. MAT does not apply to PLCs having opted for the concessional tax regime of 25.17%	AMT applies at 21.55% if LLP has claimed Startup tax holiday
Distribution of dividend / profit	Taxable in the hands of shareholders at (a) ordinary rate for Indian residents and (b) approx. 21.84% for foreign companies	Distribution of profit is tax exempt in the hands of the partners.

Step-By-Step Entity Formation and Registration Process

Entity Registration

In India, incorporating a corporate entity entails a number of statutory steps that are mainly governed by the Companies Act and administered by the Ministry of Corporate Affairs (MCA). While specific requirements may slightly differ based on the chosen legal structure of the startup, the foundational principles remain similar. This section outlines the typical process of incorporation of a private limited company.

STEP 01

Obtain Digital Signature Certificate (DSC)

DSC is a secure digital key that verifies the holder's identity and is a legal equivalent of a physical signature. It is required for submitting all online forms to the MCA. A DSC from a Certifying Authority approved by the Controller of Certifying Authorities (CCA) is required of all prospective directors of the business.

STEP 02

Obtain Director Identification Number (DIN)

A DIN is a unique identification number assigned to any individual who intends to be a director of a company or an LLP by the MCA. DINs for up to three proposed directors may be applied for by new entities along with their application for incorporation (Form SPICe+ Part B). Unless exempted, at least one director must be a resident of India (someone who has been in the country for 182 days or more during the preceding calendar year).

STEP 03

Name Approval and Reservation

To secure a unique and available name for the proposed company, it is to be checked whether the planned company name complies with the Companies (Incorporation) Rules, 2014 and is not identical to any existing company names or trademarks. The name can be reserved by filing Form SPICe+ Part A with the MCA. It is advisable to provide at least two proposed names in order of preference. Validity is 20 days for new applicants (60 days for existing companies changing name).

STEP 04

Drafting of Charter Documents

As the legal blueprints of the company, Memorandum of Association (MoA) and Articles of Association (AoA) require careful drafting by legal professionals.

The MoA defines the fundamental powers, objectives and scope of the business activities of the company and outlines the liability of members and authorised share capital. The 'Objects Clause' in the MoA must be meticulously drafted to comprehensively cover all current and future business activities, as the company cannot legally act beyond these defined objects.

The AoA establishes the internal regulations for the company's governance and indoor management, covering particulars like share issuance, share transfers, the composition of the board of directors and executive management, director authority, board and general meetings, voting rights, and auditor appointment and removal. The AOA can be customised to allow a number of exclusions or procedural relaxations.

STEP 05

Filings for Incorporation (SPICe+ & AGILE-PRO)

SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus) Part B is used for applying for incorporation of the company, submitting details of subscribers, directors, share capital, and attaching the MoA, AoA, and other declarations. AGILE-PRO facilitates several key registrations simultaneously with company incorporation including Goods and Services Tax Identification Number (GSTIN), Employees' State Insurance Corporation registration, Employees' Provident Fund Organisation registration, Profession Tax registration and Opening of Bank Account).

Note: Proof of the company's registered office address (e.g., utility bill, rent agreement, NOC from owner) must be submitted during this filing. The registered office must be located within India.

STEP 06

Certificate of Incorporation

The MCA issues a Certificate of Incorporation after approving the application and determining that all the documents are in order. This document serves as evidence of the business's legitimate existence. This certificate, or soon after, is also accompanied by the company's Permanent Account Number (PAN) and Tax Deduction Account Number (TAN).



Other Registrations

While further registrations post-incorporation may be required based on the business type, turnover, and location, the common registrations would include:



Goods and Services Tax (GST) Registration (mandatory if the aggregate turnover exceeds thresholds of INR 20 Lakhs for services and INR 40 Lakhs for goods in most states; lower for some special category states)

Shops & Establishment Act Registration (mandatory for establishments engaging in commercial activities, applicable to the state where the company's office or place of business is located)

Import Export Code (IEC) if the business involves import or export of goods or services

Professional Tax Registration as an employer and deduct/pay professional tax depending on the state where its office is located and where employees are working

Industry-Specific Licenses/Permits depending on the nature of the business (e.g., FSSAI for food businesses, RBI licenses for NBFCs, RERA for real estate developers).

Professional assistance is highly recommended to ensure compliance and to navigate the complexities in incorporation and other registration.

Key Operational Licenses and Approvals

Tax Registrations (PAN, TAN, GST)

As an Indian PLC or LLP, the Startup shall be required to obtain a Permanent account number (PAN). This is the common tax identification number required for various tax compliances and payments in India. Additionally, the Startup would need to obtain a Tax Deduction and Collection Account Number (TAN) to comply with its obligations relating to deduction or withholding or collection of taxes.

Registering a business entity under the GST Law involves obtaining a unique identification number from the relevant tax authorities. GST registration is based on the PAN and is specific to each State or Union Territory.

Shops & Establishment Registration

Each state in India has enacted its own Shops and Commercial Establishments statue, which governs the conditions of employment, and other service-related matters in respect of employees engaged in shops, commercial offices, co-working spaces, and other non-factory establishments. Employers are typically required to obtain registration under the applicable state-specific S&E Acts within 30 days of commencing business operations (while most states mandate registration irrespective of the number of employees, certain states such as Gujarat and Maharashtra require the engagement of at least 10 employees for such registration requirement to apply).

Given the variation in applicability thresholds across jurisdictions, it is advisable to review the specific requirements of the relevant state and ensure timely compliance based on their operational footprint.

Factories Act

All factories and manufacturing premises in India are governed by the provisions of the Factories Act, 1948. The statute regulates matters relating to occupational health and safety, welfare, working hours, and employment conditions for workers engaged in such factories / premises. It is pertinent to note that the Factory Act applies to every establishment where a 'manufacturing process' is carried on, and which employs either:

10 or more workers with the aid of power

20 or more workers without the aid of power

That said, several states, including Rajasthan, Goa, and Haryana, among others have amended their respective state-specific Factories Rules to raise the threshold for applicability. In such states, the Factories Act now applies only to establishments employing 20 or more workers with the aid of power or 40 or more workers without the aid of power, effectively doubling the original headcount thresholds.

Employers operating such establishments are required to obtain a factory licence and register the premises under the Factories Act prior to the commencement of manufacturing operations. The licensing process includes approval of building and machinery layout plans, adherence to statutory safety and environmental norms, and formal appointment of a designated Occupier and Factory Manager.

Other Labour & Welfare Registrations

Employees' Provident Funds and Miscellaneous Provisions Act, 1952

The EPF Act establishes a mandatory social security framework for employees by providing for provident fund, pension, and life insurance benefits. It applies to every establishment employing 20 or more persons, irrespective of whether they are permanent, temporary, or contractual employees drawing wages below the statutory wage ceiling (INR 15,000 at joining) are covered mandatorily. For, those who draw more than INR 15000, the membership is voluntary.

Registration with the EPFO becomes compulsory once this threshold is met and must be completed through the EPFO's online portal. Notably, once an establishment is covered under the EPF Act, it remains covered even if its workforce size subsequently falls below 20 employees. Voluntary registration is also permitted under the EPF Act, allowing establishments with fewer than 20 employees to opt for coverage under the EPF Act, with the consent of the majority of their workforce, subject to approval by the EPFO.

Employees' State Insurance Act, 1948

The Employees' State Insurance Act, 1948 provides a range of health, maternity, sickness, and disability benefits to eligible employees, primarily through a nationwide network of ESIC hospitals and dispensaries.

The Employees' State Insurance Act applies to establishments employing 10 or more persons. Coverage for contributions and benefits extends to employees earning wages up to INR 21,000 per month (or INR 25,000 for persons with disabilities).

Professional Tax (State-specific)

Professional Tax is a state-level levy imposed on individuals engaged in employment, trade, or professions. While not applicable across all Indian states, several jurisdictions, such as Maharashtra, Gujarat, Tamil Nadu, among others have enacted such statutes. Employers are typically required to obtain two separate registrations:

Certificate of Registration, to enable monthly deduction and remittance of professional tax from employees' salaries

Certificate of Enrolment, to account for the employer's own professional tax liability, where applicable under state law

The timeline for registration and the frequency of return filings varies by state. However, in most cases, employers are expected to complete registration immediately upon engaging salaried employees in the state.

Labour Welfare Fund Acts (State-specific)

LWF Acts have been enacted in several Indian states with the objective of financing welfare schemes and social benefit programmes for workers, including those relating to housing, health, education, recreation, and other support services. While the Labour Welfare Fund Acts are state-specific, most states that have enacted LWF laws such as Maharashtra, Gujarat, Tamil Nadu, Karnataka, Telangana, and Haryana require employers to register their establishments with the respective State Labour Welfare Board through designated online portals. In other states like Rajasthan, Madhya Pradesh, and Uttar Pradesh, no separate registration is prescribed, and remittance of contributions itself constitutes compliance.

Contract Labour (Regulation and Abolition) Act, 1970

The CLRA governs the engagement of contract labour through third-party contractors and seeks to ensure fair wages and working conditions for such workers. It applies to establishments engaging 20 or more contract workers, though some states prescribe higher thresholds (up to 50). Where applicable, the principal employer must register with the labour department, and the contractor must obtain a licence under the provisions of the CLRA.



Udyam MSME Registration

Udyam Registration is an essential first step for startups in India to formally establish themselves as a Micro, Small, or Medium Enterprises (MSMEs) and qualify for various government assistance and advantages. This self-declaration-based registration can be done online and serves to promote expansion and competition.

What is Udyam Registration?

The Ministry of MSME, Government of India, introduced a free of cost, online, paperless, and self-declaration based, Udyam registration which is the new MSME registration procedure that replaces the previous Udyog Aadhaar Memorandum.

Eligibility and Classification Criteria

An organization is categorized as an MSME based on turnover and investment in plant and machinery or equipment. This is applicable to both manufacturing and service-oriented businesses.

ENTERPRISE	MICRO	SMALL	MEDIUM
Investment	Up to INR 2.5 Crore	Up to INR 25 Crore	Up to INR 125 Crore
Turnover	Up to INR 10 Crore	Up to INR 100 Crore	Up to INR 500 Crore

Note: The Income Tax Return (ITR) from the previous years will be used to calculate the investment in plant, machinery, or equipment. GSTIN turnover data will be taken into account for calculating turnover.

Udyam Registration Process

- Udyam Registration Portal is used for registration.
- Aadhaar number of the proprietor's (in the case of a proprietorship) and that of the authorised signatory's (in the case of companies or societies) or managing partner's (in the case of a partnership firm or LLP), is required for the process, which is fully self-declaratory.
- Government databases are enabled to retrieve PAN and GST-related information on investments and turnover. Hence, no paperwork or evidence in this behalf is needed.
- Following a successful registration, the 'Udyam Registration Number' is generated as a permanent identity number and a 'Udyam Registration Certificate' is issued electronically.

Benefits for Startups

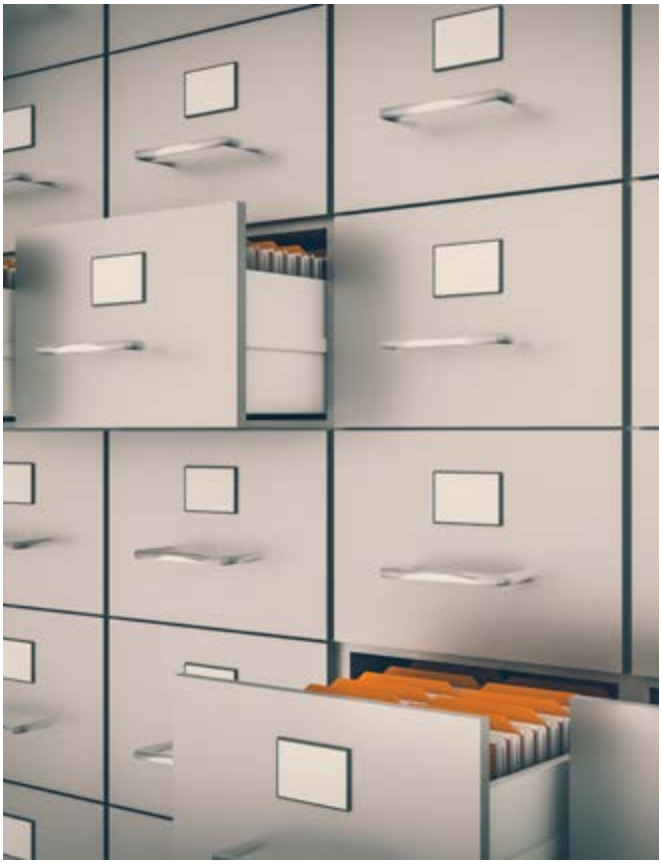
Startups can benefit significantly from registering as an MSME under Udyam, which promotes their growth and sustainability. Some of the benefits that registered MSMEs receive are:

- Priority lending by banks to MSMEs / lower interest rates, favourable collateral requirements, and easy credit availability.
- Eligibility for a number of government Program/ programme, including the Credit Linked Capital Subsidy Scheme (CLCSS), the Credit Guarantee Scheme for Micro & Small Enterprises (CGTMSE), interest subvention programs, and programs for technology and skill development.
- MSMEs are protected against delayed buyer payment under the Micro, Small and Medium

Enterprise Development (MSMED) Act, 2006 which also includes provisions for interest on such delays.

- Significant concessions on fees for filing patents and trademarks.
- Easier and simplified compliance in relation to various labour laws and environmental regulations.
- Preferential treatment in procurement of government tenders, tender fee exemptions and reservations through platforms like the Government e-Marketplace (GeM).
- Some states including Maharashtra, Punjab, Uttar Pradesh and West Bengal offer exemptions or subsidies on electricity duty for registered MSMEs.

Obtaining Udyam MSME registration is a strategic commercial decision that may offer a startup a competitive edge by opening up a strong support ecosystem.



Founder's Agreement

What is a Founders' Agreement?

A Founder's Agreement is a contract among the startup's founding shareholders that stands in for a formal shareholders' agreement until external investors step in. It codifies the founders' relationship, assigns accountability, and crucially, provides a protocol in case any founder opts to exit early for any reason.

The Founder's Agreement may be entered into at the time of incorporation, or otherwise, when the co-founders of the incorporating founder are brought onto the company's CAP table. Doing so minimises negotiation friction with future investors and provides a single source of truth if a co-founder walks away or contributions change.

Key Terms of a Founders' Agreement

Contributions and Vesting

The agreement should itemise every founder's input – whether in cash, intellectual property, or other service – such that the understanding and manner of equity allocation is reduced to writing and recorded. The very act of reducing the same to writing serves to solidify the basis on which the respective founder's equity interests is granted. This gives the founders the opportunity to provide that shares vest over time or against milestones; if a founder departs early, any unvested portion automatically reverts to the company or is cancelled, preventing an inactive 'free-rider' from blocking future CAP table clean-ups.

Roles and Authority

Clear job descriptions – Chief Executive Officer forstrategy and investor relations, Chief Technology Officer for product road-map, Chief Operating Officer for execution, for example – reduce operational overlap and speed decision-making. A defined reserve-matter list (e.g., new debt, pivots, key hires) forces unanimous consent on high-impact issues while day-to-day matters flow through the designated leader, ensuring agility without sacrificing collective oversight.

Intellectual Property Ownership

All pre-existing code, patents, trademark and domain names should be formally assigned to the company on execution, with limited royalty-free licences back to a founder only if absolutely necessary.

Future work product must vest in the company automatically, closing the door to later disputes that can derail diligence or an acquisition.

Exit Mechanics

Define 'good' leaver (e.g., illness, board-approved sale of shares) and 'bad' leaver (e.g., resignation within the cliff period, misconduct). Good leaver equity may be repurchased at fair market value, whereas bad-leaver equity is bought back / sold to an identified third party at nominal value. Inclusion of drag-along and tag-along clauses helps to maintain deal flexibility when venture investors arrive.

Governance and Dispute Resolution

Outline board composition, meeting cadence, and information rights to institutionalize transparency. Insert a stepped dispute pathway – internal negotiation, then mediation, and finally arbitration seated in a neutral jurisdictions, so disagreements are resolved quickly and confidentially, preserving brand value.

Protective Covenants

Comprehensive confidentiality, non-compete and non-solicitation clauses, anti-moonlighting clauses, and non-disparagement clauses help to protect trade secrets, key staff and customers. A well-calibrated duration and geographic scope keeps covenants enforceable while reassuring investors that core assets will not walk out the door with a departing founder.



2

Key Regulatory Framework



This section sets out a broad general framework of laws applicable to all Indian businesses. The specific applicability of this framework for start-ups is detailed further below.

Companies Act, 2013

Companies Act

The Companies Act is a comprehensive legislation governing everything from incorporation, governance and winding-up of companies. It provides detailed rules and procedures to be followed by private limited companies to ensure transparency and accountability of the founders and boost investor confidence. The Companies Act offers various structures including private limited companies, OPCs and small companies, each of which provide different advantages.

The Role of the Board of Directors



Mandatory Board

Every company is required to have at least two directors, (minimum one director being resident director) in case of a private limited company, and at least one director, in case of an OPC. These directors are responsible for making strategic decisions, ensuring compliance, and acting in the best interests of the company.

Board Meetings: The board must meet at least 4 times in a year, with a maximum gap of 120 days. In case of OPCs, the board is only required to meet once every half calendar year, with a minimum gap of 90 days.

Written notices and agendas are to be circulated at least 7 days in advance.

Minutes of the meetings must be maintained, and attendance, discussions and resolutions must be properly recorded and signed.



Powers of the Board

Directors have various powers including making calls for share payments, issuing or buying back of shares, borrowing, investing, appointing KMPs/auditors etc. for the company (subject to restrictions in the charter documents).



Formality of the Decision-Making Process

The minutes of meetings and resolutions passed are mandatory documents to be maintained. They are essential for compliance, audits, and review by investors.

This level of formality ensures decisions are properly recorded and can be reviewed later – whether by investors, auditors, or in case of legal scrutiny.

Key Appointments Beyond the Board

Founders must make a conscious effort to build professional management. Some of the key positions are:



Legal Head

An experienced lawyer to manage contracts, legal risks, and compliance-related aspects.

Company Secretary / Compliance Head

They can prepare a comprehensive list of compliance and build internal systems for timely and appropriate compliance and to handle statutory filings, administration of meetings, and maintenance of records.

Chartered Accountant / Head of Finance

A CA / Finance Head is key to successful enterprise robust financial planning and strict implementation of financial policies on revenue recognition and day to day management of debtors and creditors.

Auditor

Statutory auditors are gatekeepers of compliance and governance.

Creating an Advisory Board

An advisory board is an informal body of industry experts and mentors who provide guidance and networking opportunities without taking on the legal risk of directorship. An advisory board can provide founders of startups with much-needed guidance for its long-term sustainability. A good advisory board also ensures that the startup can imbibe ethical values and adopt socially responsible business models.

The Crucial Role of Shareholders

Shareholders are the legal owners of the company who invest in its capital. They are vested with several rights and duties by the Companies Act as follows:



Ownership and Voting Rights

- **Capital Contribution**: Shareholders contribute to the company's share capital in exchange for ownership and associated rights.
- **Decision-making Powers**: Shareholders' vote at general meetings is required for:
  - Appointing and removing directors and auditors
  - Approving annual financial statements, dividends, changes to charter documents, M&A opportunities, capital alterations, winding up, etc.



Meetings of Shareholders

- **Annual General Meeting (AGM):** Must be held once a year. A minimum notice of 21 days is required to be given (can be reduced to < 21 days if 95% of shareholders approve).
- **Extraordinary General Meeting (EGM):** May be called by the board at its discretion. May also be called by the shareholders holding a minimum of 10% of the voting rights of the company.
- **Quorum:** A minimum of 2 shareholders must be present for a meeting to be held. Voting can be done by a show of hands, a poll, or by online-voting.

Right of Information and Inspection

Shareholders of a company have the right to inspect its statutory registers and books, receive its financial statements and inquire directors about the company's affairs.

Putting it Together for Founders

Private Limited Company Model = Structured and Transparent

01 Board of Directors

Meet regularly, follow formal procedures, record all decisions.

02 Shareholders

Meet annually, review performance, and ensure good governance standards.

03 Professional Experts

Legal and secretarial heads, auditor and/or chartered accountants to ensure that the company functions smoothly.

04 Advisory Board

An informal layer of experts bringing knowledge and networks, without legal baggage.

Key Takeaway for Founders

The formal structure of a private limited company builds discipline, trust, transparency, and credibility, protects founders and boosts investor confidence.

LLP Act, 2008

LLP Governance under the LLP Act

An LLP offers a more open structure - flexible like a partnership but protected like a private limited company. It suits founders who prefer freedom in operations without the excessive compliances of private limited companies.

Structural Essentials: The LLP and its Partners

Separate Legal Entity

An LLP can buy and sell property, execute contracts, sue or be sued independent of its partners. It offers perpetual succession irrespective of changes in partners.

Minimum of Two Partners

A partner may be a natural person or a recognized body corporate. There is no upper limit on partners. If the LLP continues with only one partner for more than six months, the sole partner becomes personally liable.

Designated Partners

It is mandatory to have a minimum of two designated partners. One of the designated partners must be an Indian resident. A vacancy in partnership must be filled within 30 days.

LLP Agreement: The Governance Backbone

Unlike a company, the LLP Act allows governance flexibility which can be defined in a carefully drafted LLP agreement.

Essential clauses include:

- Contributions of partners (cash, assets, services)
- Profit / loss sharing (need not be proportionate to contributions)
- Decision-making procedures and management structure
- Rights, duties, voting mechanisms, dispute resolution and exit mechanisms

In absence of an LLP agreement, the default provisions of the LLP Act will apply which are often too generic for Startups.

Key Takeaway for Founders

A carefully and well-drafted LLP agreement is essential for defining the role, responsibility, scope and extent of authority contribution, liability and profit share of each partner.

Meetings, Records and Transparency

- The LLP Act does not provide for formal meetings to be held, but the best practice is to hold regular meetings of partners / management.
- The LLP agreement should define the frequency of meetings, notice period required, quorum and agendas and the requirement to maintain proper documentation of minutes of meetings
- Partners have the right to inspect the books of the LLP. On the death of a partner, his/ her legal heirs have the right to inspect the records as well.

Accounts and Audit Requirements

Book-keeping and Financial Statements

- LLP should maintain double-entry books (cash or accrual basis) at its registered office.
- LLP should make annual filings as required under the LLP Act.
- An audit is mandatory only where:

The annual turnover exceeds INR 40,00,000

The partners' contributions exceed INR 25,00,000

- For smaller LLPs, where audit is optional and to reduce the compliance burden, it is recommended to instil a discipline of record keeping, accounting and building trust among all stakeholders from the very inception.

Rights and Duties of Partners as Per the LLP Act



Rights

To participate in and vote on business decisions

To inspect books and records of the LLP at anytime (also available to their heirs upon death)

To receive profits, management rights, etc as defined in the LLP agreement



Duties

To act in good faith (keep the interests of the LLP above personal gain)

To indemnify the LLP against instances of fraud or misuse of authority

To manage the LLP (subject to the LLP agreement and the LLP will not be bound by unauthorized actions)



Flexibility, Security and Exit

- No minimum capital requirement
- **Limited liability:** Partners' liability only up to agreed contribution and the LLP to bear business liabilities
- **No mutual agency:** A partner's actions does not bind other partners
- An LLP can merge, convert (even to a private limited company), or wind-up as per the LLP Act and the LLP agreement.

Income Tax Act

Levy of income tax in India is governed by the provisions of Income Tax Act, 1961 (Income Tax Act). Under the Income Tax Act, an Indian resident company or LLP is liable to tax on its global income in India. The income is computed under specific heads such as 'Profits and Gains from Business or Profession', 'Capital Gains' and 'Income from Other Sources', as per the prescribed mechanism and thereafter, consolidated income is taxed at the entity level. Except for certain form of capital gain

which is taxed at special rates i.e. 12.5% plus applicable surcharge and cess for long term capital gain and 20% plus applicable surcharge and cess for short term capital gain on listed shares sold on the stock exchange, entire income of an Indian entity will be taxed at the ordinary applicable rate.

Income Tax Act also imposes a strict obligation on the Indian entity to ensure compliance with provisions relating to tax deduction at source (TDS). In terms of a key amendment, the angel tax provision, which sought to levy tax in the hands of a closely held company issuing shares at a premium to fair value, has been abolished with effect from 1 April 2025.

Goods & Services Tax (GST)

Concept of Supply

The concept of 'supply' is fundamental to the GST law which helps determine whether any activity/transaction would trigger a tax liability. It includes all forms of supply such as sale, transfer, barter, exchange, lease, rental, or disposal, etc. These supplies must be made or agreed to be made for a consideration in the course or furtherance of business.[1] Further, the term 'business' is defined broadly, and even occasional transactions may qualify as supply.

Typically, GST is payable only when a supply is made for consideration, however, certain transactions are taxable even in the absence of consideration. These transactions are usually involving related persons, inter-branch office transactions, services between group companies, secondment of employees, internally generated services, etc. Further, import of services from related persons or foreign establishments (like a head office outside India) are also subject to GST, even if provided without any charge.

Types of Supply



Taxable Supply

Transactions of goods or services on which GST is charged. Businesses must collect and remit GST on these supplies at the applicable rates.



Exempt Supply

These are goods or services that are not subject to GST. No tax is collected on these supplies by virtue of tax rate being nil / zero or them being specifically exempted by way of a notification such as healthcare services, educations services, etc.



Non-GST Supply

These are goods or services that are outside the scope of GST, meaning GST is not applicable at all and include alcohol for human consumption and petrol and diesel.



Combination of Supplies

Although persons typically supply goods and services separately, they could also be supplied in combination with each other similar to supply of multiple products / goods or services with each other. While mixed supply is a combination of two or more goods or services sold together for a single price (although each item can be supplied separately); composite

[1] *Section 7, Central Goods and Services Tax Act, 2017*

supply refers to a supply consisting of multiple goods or services which are naturally bundled together, and one is a principal / main supply.

The other key difference is that in case of mixed supply, GST is charged on the whole bundle based on the item with the highest tax rate, however for composite supplies, GST is charged on the whole bundle based on the rate applicable on the principal item in the bundle.

Zero Rated Supply

Supplies made for exports or to Special Economic Zones (SEZ) qualify as zero-rated supplies under GST. This means they are taxed at 0%, not as exempt supplies, but unlike exempt or non-GST supplies, zero-rated supplies allow full input tax credit (ITC), and suppliers can claim a refund of either the tax paid (if supplied with tax) or unutilized ITC (if supplied without tax). This benefit is available subject to rigorous prescribed documentation and conditions being fulfilled.

What to Pay? How to Pay? When to Pay?

A levy of GST is attracted on a 'supply' of goods or services or both, and the tax is payable by the supplier, unless otherwise specified (for e.g., recipient based reverse charge basis of taxation). Under GST, the earlier four-tier rate structure has, with effect from September 2025, been rationalized into two broad slabs - 5% and 18%, depending on the nature and classification of goods or services. The standard rate of 18% applies to a majority of taxable supplies. Additionally, certain notified items such as luxury motor vehicles and aerated beverages attract GST at 40% and tobacco products attract an extra GST compensation cess.

CGST and SGST / UTGST is payable on all intra-state supplies of goods or services or both, on a value to be determined under the valuation provisions and at the rates notified by the Central Government. Similarly, IGST is levied on all inter-State supplies of goods or services or both. The levy of CGST & SGST or IGST is dependent on the location of the supplier and the place where goods are services are consumed. The IGST Act provides detailed provisions to determine whether the supply is to be treated as inter-state or intra-state.[2]

Equally important is to ascertain the point in time at which the tax liability is triggered. Under the GST law, the time of supply is determined separately for goods and services, based on factors such as receipt of payment, issuance of invoice, and receipt of advance, among others.[3]



[2] *Chapter V, Integrated Goods and Services Tax Act, 2017*
[3] *Section 12 and 13, Central Goods and Services Tax Act, 2017*

Input Tax Credit

The GST regime offers seamless credit on goods and services across the entire supply chain, with exceptions like supplies taxed under the composition scheme and exempted goods and services. To claim ITC, a person must be registered, receive goods or services on payment of tax, and use them in the course of and furtherance of business. ITC from the tax paid for inward supplies used in business is used for offsetting it against output tax liability, thereby preventing the cascading effect of taxes and ensuring tax is levied only on value addition. Further, ITC in relation to tax paid on reverse charge basis in also available. However, certain goods and services (such as services in relation to motor vehicles, construction contracts, food and beverage, etc.) are specifically blocked under the CGST Act, and ITC towards them is not allowed.[4]

Conditions for Availing ITC

- Receipt of the goods or services or both (including in cases where delivery is made to someone else on your behalf).
- Possession of valid tax invoice or similar document issued by a registered supplier.
- GST charged on the supply must have been paid to the government by the supplier.
- GST return in Form GSTR-3B has been filed by the person claiming ITC for the relevant period.
- Supplier must be paid within 180 days from the date of invoice, failing which the ITC must be reversed with interest. It can be reclaimed once payment is made.
- ITC cannot be claimed after 30th November following the end of the financial year in which the invoice or debit note was issued.
- Depreciation under the Income Tax Act on the GST portion of capital goods or machinery has not been claimed.
- The supplier must report the invoice in their GST return (GSTR-1), and it must appear in the recipient's GST portal (auto-populated via GSTR-2B).

[4] *Section 17, Central Goods and Services Tax Act, 2017*

Input Service Distributor

An ISD registration is responsible for distributing the ITC received for or on behalf of its branch offices or units that have separate GSTINs but are registered under the same PAN. The respective branch offices avail credit in their regular registrations of such ITC received from the ISD registration.

E-Commerce Operators (ECOS)

Any person who owns, operates or manages an electronic facility/ platform facilitating online sale of goods or services such as online marketplaces, aggregators, etc. is considered an E-commerce operator. E-commerce operators are required to undertake tax collection at source (TCS) at the prescribed rate on the net value of taxable supplies made through their platform and remit it to the government. For certain services like cab rides, housekeeping services etc booked through ECOs, the operator is treated as the supplier and must pay GST as opposed to the actual supplier. [5]

FEMA & FDI Policy

Overview

Foreign investments in India are governed under the provisions of the Foreign Exchange Management Act 1999 (FEMA) read with the rules and regulation made thereunder by the Reserve Bank of India (RBI). The inflow of foreign investment in India is specifically governed by the provisions of the Foreign Exchange Management (Non-debt Instruments) Rules 2019 (NDI Rules) read with the consolidated foreign direct investment policy, issued by the Department for Promotion of Industry and Internal Trade (DPIIT) (FDI Policy). The Government also issues circulars to clarify / change the framework when required. In addition, the RBI issues Master Directions on foreign investments (Master Direction) periodically. This Master Direction also provides guidance on the regulatory framework governing foreign investment in India (collectively referred to as the Exchange Control Regulations).

Exchange Control Regulations prescribe entry routes for foreign direct investment (FDI) by setting out activities undertaken by companies in India that:

- **A** are prohibited to receive FDI
- **B** may receive FDI, subject to prior regulatory approval, ie, the approval route
- **C** may receive FDI without any approvals, ie, the automatic route

Exchange Control Regulations also prescribe sectoral caps and conditions to be satisfied with respect to FDI in certain sectors. Where there are no sectoral caps and conditions or sectors in the prohibited list, FDI up to 100% is permitted under the automatic route.

[5] *Notification No. 17/2017-Central Tax (Rate) dated 28 June 2017 (as amended from time to time)*

Exchange Control Regulations (and consequently the sectoral caps, entry routes, and conditions to be satisfied with respect to FDI in certain sectors) are applicable to any entity in India which receives FDI, directly or indirectly.

There are several recognized methods through which foreign investors can channel FDI into India, including:

- Subscribing to a company's shares
- Engaging in corporate restructuring such as mergers, demergers, or amalgamations
- Receiving shares through preferential allotment or private placements
- Acquiring shares directly from existing shareholders or Indian companies
- Receiving shares via rights issues or bonus issues
- Converting convertible notes into equity
- Executing a capital instrument swap

Further, apart from FDI, these investments can generally be made as Foreign Venture Capital Investment, or Foreign Portfolio Investment.

The RBI has also issued pricing guidelines for the transfer of shares between a resident to a non-resident or vice versa, for exchange control purposes. Further, Startups receiving FDI must ensure that foreign funds are routed through an Authorized Dealer (AD) Category-I bank, as required under Section 10(1) of FEMA, 1999. The Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations 2019 prescribe that the Startup should receive the investment amount inward remittance through ordinary banking channels.

The investee resident company must also adhere to reporting requirements which are set out in Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, and vary from when the company is issuing equity instruments in exchange for purchase consideration, to when it a resident is transferring her shares to a non-resident, and when a periodic reporting needs to be made.

While different structures such as LLPs can also receive foreign investment, a private limited company registered under the Companies Act, 2013 is the most commonly used legal structure for startups receiving foreign investment as it allows equity-based fundraising via shares, debentures, and convertible instruments and offers limited liability to shareholders.

Labour Laws

India's labour and employment law landscape is grounded in a diverse and evolving set of statutes enacted at both the central (i.e. federal) and state levels. These laws collectively govern the rights and responsibilities of employers, employees, and span across a wide range of areas including social security, wages, working conditions, equality and anti-discrimination, health and safety, and employee welfare. The labour law framework in India is aimed at ensuring fair and equitable treatment of workers, promoting industrial harmony, and safeguarding the interests of both employees and employer.

As such, Indian labour laws are applicable based on several factors including the number of employees, nature of work, type of establishment (i.e., factory or commercial establishment), geographic location, and employee classification (permanent, fixed-term, or contractual employee). The labour regulatory regime in India covers a wide spectrum of employment-related areas, including but not limited to the following.



Social Security Laws

These include the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' State Insurance Act, 1948, and the Payment of Gratuity Act, 1972. These statutes mandate employer contributions or payment towards long-term savings, retirement benefits, life and disability insurance, and health coverage for eligible employees.



Wages and Remuneration

Statutes such as the Minimum Wages Act, 1948, the Payment of Wages Act, 1936, the Payment of Bonus Act, 1965, and the Equal Remuneration Act, 1976 ensure that employees are paid fairly, on time, and without discrimination. These laws also regulate deductions from wages and set out procedures for statutory bonus entitlement and computation.



Working Conditions and Employment Terms

The Factories Act, 1948 and state-specific S&E Acts govern the conditions of employment, including hours of work, weekly holidays, leave entitlements, overtime wages, and workplace safety. These laws apply depending on the nature of the workplace and the number of workers engaged.



Welfare and Tax Contributions

State-specific LWF Acts and PT Acts impose obligations on employers to make periodic contributions / payments toward employee welfare and remit profession-based taxes deducted from employees. The rates, thresholds, and compliance processes vary from state to state.



Equality, Maternity, and Anti-Discrimination

Laws such as the Maternity Benefit Act, 1961; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; the Rights of Persons with Disabilities Act, 2016; and the Transgender Persons (Protection of Rights) Act, 2019 mandate the creation of

inclusive and equitable workplaces and impose specific duties on employers to implement policies, provide leave and benefits, and protect against workplace discrimination and harassment.



Contract Labour and Outsourced Engagements

The Contract Labour (Regulation and Abolition) Act, 1970 and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 govern the engagement of contract labour and construction workers engaged respectively, through third-party contractors. These statutes are designed to ensure that such workers are provided with fair wages, welfare facilities, and safe working conditions, on par with those available to directly employed personnel. Both statutes place the onus on the principal employer to ensure compliance by contractors and to safeguard the rights and entitlements of the engaged workforce.

Given the multi-layered nature of India's labour law regime, which comprises both centrally enacted legislation and state-specific rules, it is essential for startups and high-growth businesses to identify and align with applicable thresholds and statutory obligations early in their lifecycle. Doing so helps mitigate the risk of penalties, employment-related disputes, and regulatory action.

Beyond legal exposure, labour law compliance is increasingly seen as a marker of institutional governance and operational maturity by investors, regulators, and commercial partners. Gaps in fundamental compliance, such as failure to register employees under applicable schemes, disseminate mandatory policies, or remit statutory contributions, can adversely affect fundraising, diligence outcomes, and transaction readiness. Accordingly, proactive and consistent alignment with applicable labour law requirements is not only a regulatory obligation, but also a strategic business priority.

Our detailed observations regarding the compliance obligations arising from the aforementioned labour and employment statutes are set out in the previous sections.

Legal Metrology, Packaging & Labelling

Overview

The packaging and labelling of goods for retail sale, distribution, or delivery in India are regulated by the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011. It lays down requirements for packaging, labelling, and measurement standards for goods sold in India. it mandates that packages clearly display important information such as the name and address of the manufacturer, packer, or importer (as applicable), the country of origin, product name, quantity, MRP (inclusive of all taxes), etc. Also provides additional sector specific rules which apply to items like electronics, cosmetics, food products, seeds among others.

Beyond label content, several procedural compliances are also required under the said Rules. These include mandatory registration of all locations where packaging or

import activities are undertaken, ensuring that labelling of imported goods happens before customs clearance (with limited exceptions), and proper verification and stamping of weighing/ measuring instruments. Non-compliance can lead to shipment delays, penalties, and seizure of goods at customs.

BIS Guidelines

The Bureau of Indian Standards (BIS), India's national standards authority, ensures that specific products meet defined safety and quality norms before being introduced into the Indian market. BIS certification is mandatory for categories such as electronics, household appliances, automotive parts, and steel products. This certification serves as official confirmation that a product complies with Indian standards, and without it, startups cannot legally manufacture, import, or sell regulated items in India.

To obtain BIS certification, companies must first confirm whether their product appears on the mandatory certification list and determine whether it falls under ISI Mark or CRS registration.

The process involves testing the product at a BIS-recognized lab, submitting the application online, and – in the case of ISI certification – undergoing a factory inspection. Upon meeting all compliance parameters, the BIS issues the certificate, allowing the product to bear the BIS or ISI mark, signifying conformity with Indian standards.



3

Compliance, Taxation & Governance



This section sets out the general governance and compliance obligations applicable to all Indian businesses. The specific applicability of these obligations and specific exemptions for start-ups is detailed in the next chapter.

ROC Filings & Annual Returns

Under the RUN (defined below) and and the LLP Act, 2008, registered companies and Limited Liability Partnership (LLP) are required to ensure that they file their annual compliances systematically and on time. This is particularly relevant for startups given that a failure to do so could attract monetary penalties that are potentially debilitating and disruptive for an emerging entity with limited funds. As such, a comprehensive checklist of documents and forms that need to be filed would be useful in navigating through this maze of compliances.

Companies Act

Pre- Incorporation Compliance

#	COMPLIANCE	COMMENTS
1	DIN & DSC	Required for all proposed directors to digitally sign incorporation documents.
2	Name Reservation – Form 'RUN' / SPICe + Part A	To secure an approved name from MCA before incorporation. 'RUN' is the form/service used for both new company/LLP names and for name changes to existing entities.
3	Incorporation – Form INC-32 (SPICe + Part B)	Filed with MoA (INC-33), AoA (INC-34), AGILE-PRO, PAN, TAN, EPFO, ESIC, GST registration forms.
4	Certificate of Incorporation	Issued by the Registrar upon approval.

Post-incorporation One-time Filings

#	FORM	DESCRIPTION	TIMELINE
1	Form INC-20A	Declaration for commencement of business after credit of share subscription to the bank account	Within 180 days of incorporation
2	Form ADT-1	Appointment of the first statutory auditor (within 30 days from date of incorporation)	Within 15 days of appointment
3	Form MGT-14	Filing of certain Board / shareholder resolutions, if applicable.	Within 30 days of passing the resolution

Quarterly / Half-yearly Filings

#	FORM	TIMELINE	APPLICABILITY
1	MSME Form-I	30th April and 31st October every year	If payments to MSMEs are delayed more than 45 days
2	Form PAS-6	Within 60 days from the conclusion of each half year. The half year periods are 1st April to 30th September and 1st October to 31st March.	For companies issuing shares in demat form

Annual Filings

#	FORM	TIMELINE	APPLICABILITY
1	Form AOC-4	Filing of financial statements adopted at the AGM	Within 30 days of AGM
2	Form MGT-7	Filing of annual return	Within 60 days of AGM
3	Form DPT-3	Statement on return of deposits or exempted loans	30th June every year
4	Form BEN-2	Filing of significant beneficial ownership (on receipt of BEN-1)	Within 30 days of BEN-1
5	Form MGT-8	Certificate from a company secretary (if applicable)	With MGT-7 for certain companies
6	Form AOC-5	Notice of address where books of account are maintained (if not at registered office)	If applicable
7	DIR-3 KYC	Every director who has been allocate a DIN	30th September every year

Ongoing Registers and Disclosures

COMPLIANCE	DETAILS	TIMELINE
Statutory Registers	Maintain registers for: Directors (MBP-1), Members (MGT-1), Share transfers (SH-2), Investments (MBP-3), Contracts (MBP-4), Charges (CHG-7), etc.	Ongoing
DIR-8	Director's declaration of non-disqualification	At Appointment + Annual
MBP-1	Disclosure of director's interests	At appointment + Annual + when there's a change
Shareholder agreements / Board resolutions (MGT-14)	Certain corporate actions (change in MoA/AoA, loans under Sections 185 / 186, etc)	30 days from resolution

LLP Act



Initial Filings and Registration

- **Firm Name Reservation (Form 1):** Application for checking availability and reserving the proposed name. The name cannot be similar to any existing company or LLP in India and must comply with the Emblems and Names (Prevention of Improper Use) Act, 1950.
- **Incorporation of LLP (Form 2):** Application to register an LLP with the Registrar of Firms (ROF) along with incorporation documents, including:
  - Name availability application.
  - Details of the LLP Agreement.
  - Consent of partners.
  - Proof of address of the registered office.
- Certificate of Incorporation: Issued by the ROF upon satisfaction of all conditions.



LLP Agreement

- Must be drafted and signed within 30 days of incorporation.
- **Form 3:** Filing of the LLP Agreement within 30 days of incorporation.
- If no agreement is entered into, Schedule 1 of the LLP Act will apply.



Partner Appointment

- **DPIN and DSC:** Obtaining Designated Partners Identification Number (DPIN) and DSC for designated partners.
- **Form DIR-3:** Application for DPIN.
- **RUN-LLP Form:** Reservation of the LLP name on the MCA portal.

Annual Compliances

- Statements of Accounts and Solvency:

Form 8: Filing on or before 30 October of every financial year

Required to file regardless of profit or turnover

- Annual Returns:

Form 11: Filing on or before 30 May of every financial year

Required to file regardless of profit or turnover

ESOP Guidelines & CAP Table Management

What are ESOPS?

An Employee Stock Ownership Plan (ESOP) is a strategy that allows employees to own shares in the company they are employed. It's a tool to attract, retain, and motivate talent, promote loyalty aligning their interests with the company's growth and success. ESOP enables the employees to acquire shares of the company and benefit from the growth in valuation and offers an opportunity of monetizing the gain, when the company gets listed on a stock exchange. Under ESOP, the company has the freedom to set the price at with shares are offered to employees, which can be a discount to fair market value as well.

CAP Table Management

A Capitalization Table (CAP Table) is a spreadsheet / database that outlines the equity ownership of a company, giving details of the percentage of ownership, equity dilution, and value of equity in each round of investment.

Determining the ESOP Pool Size

Usually, the ESOP pool is reserved before investors are brought in. Depending on the initial stage, the pool's size may change.

Early ESOP pool creation is advised to prevent undue dilution in subsequent investment rounds.

Structuring the ESOP Pool

Allocating the ESOP pool across different employee levels ensures fair distribution. Size of grant may differ for the employees, their role, stage of company, and corresponding contribution to growth journey.

At all levels, this allocation technique aids in attracting and retaining talent.



Vesting Schedules

Commitment and loyalty vesting schedules are intended to guarantee that employees stay with the business for a specific amount of time before they are fully entitled to their allotted shares:

Standard Vesting

3-year / 4-year vestingwith a 1-year cliff

- Year 1: 0% (cliff)
- Year 2–4: Monthly vesting

Alternative Vesting

12.5% vesting in years 1–2, and 25% in years 3–5.

This arrangement guarantees that staff members are motivated to remain with the organization for an extended period of time

Exit Plans and Liquidity Events

Exit events, such as IPOs, acquisitions, or buybacks, provide liquidity to ESOP holders:

IPO: Employees can sell their shares post-lock-in period (if any).

Acquisition: Vested options may be cashed out or converted into shares of the acquiring company.

Buybacks: Companies may repurchase shares from employees, providing liquidity.

It's essential to have clear terms regarding exit events in the ESOP policy.

Key Takeaways

- **Early Planning:** Establish the ESOP pool early to manage dilution effectively.
- **Clear Vesting**: Implement clear vesting schedules to retain talent.
- **Regular Updates**: Keep the CAP table updated to track ownership and dilution.
- **Transparent Communication**: Educate employees about the ESOP program and its benefits.

Income Tax, TDS and TCS Filings

Income Tax Returns

Filing of the income tax return is a statutory obligation for all companies and LLPs in India. The common due date to file the tax return is 31st October of the succeeding year, for PLC and LLPs (who are subject to tax audit). If the LLP is not liable for tax audit, the due date will be 31st July. If transfer pricing applies, the due date to file the income tax return extends to 30th November.

Tax Audit

As per Section 44AB of the Income Tax Act, a tax audit is mandatory for entities if business turnover exceeds INR 1 crore. The threshold increases to INR 10 crore if the cash receipts and payments are less than 5% of total receipts and payments respectively. The tax audit report is required to be filed by 30th September of the relevant year.

TDS Compliances

Startups in India are required to deduct tax at source on various payments such as salary, contractual fee, rent, commission, professional fee, technical fee and consultancy fee. TDS is required to be deposited within 7th of the succeeding month or 30th April, if the TDS pertains to the month of March. To ensure the recipients are able to claim the credit of TDS, the Startup is required to file the withholding tax return on quarterly basis and thereafter, generate and issue a withholding tax certificate to such recipient.

Transfer Pricing

If the Startup has undertaken a transaction with any of its overseas affiliates, the provisions of transfer pricing would apply requiring such transactions to be undertaken at arm's length. The arm's length determination should be adequately documented in the transfer benchmarking analysis. Further, the Startup would be required to file Form 3CEB by 31st October of the relevant year.

GST Returns & Audit

Invoicing and Other Documents

Every taxable supply must be supported by a valid tax invoice issued within a prescribed timeline.[6] The invoice must be serially numbered and contain all statutory details, including a clear disclosure of the applicable tax.[7] In cases where exempt goods or services are supplied, a bill of supply[8] is issued instead of a tax invoice.

Special documentation requirements arise in specific scenarios. A self-invoice is mandated for reverse charge transactions and receipt voucher is to be issued for receipt of advances. Additionally, to account for adjustments in taxable value or tax liability, a debit note must be issued if the original invoice underreports value or tax, while a credit note is used when the invoice overstates the same or when goods are returned or found deficient. These credit/debit notes must be issued by 30th November of the following financial year to be valid for GST adjustments.

To increase accuracy and transparency in reporting, e-invoicing has been introduced for B2B transactions. Under this system, invoices must be prepared in a standard electronic format and uploaded to the Invoice Registration Portal (IRP) for validation. The IRP generates a unique Invoice Reference Number (IRN) and QR code, ensuring real-time verification, automated return filing, and simplified e-way bill generation. As of August 2023, e-invoicing is mandatory for entities with an annual turnover exceeding INR 5 crore, though



[6] *Section 31, Central Goods and Services Tax Act, 2017*
[7] *Rule 46, Central Goods and Services Tax Rules, 2017*
[8] *Rule 47, Central Goods and Services Tax Rules, 2017*

certain sectors such as banking, insurance, and goods transport agencies remain exempt regardless of turnover.[9]

Further, for inter-state and intra-state movement of goods valued at more than INR 50,000, generation of E-way bill is mandatory. It contains detailed information about the consignment, including the consignment number, the value of the goods, and the destination.[10]

Filing of Returns

The entire GST process starting from registration to filing returns and payment of GST tax is online. There are multiple returns that need to be filed on a monthly, quarterly or yearly basis by the registered tax payers.



Return of Outward Supplies

Furnished for reporting details of all outward supplies of goods and services made along debit note and credit notes raised on the sales transactions for a tax period. The same is usually filed monthly but exceptions have been created to allow some categories for taxpayers to file it on a quarterly basis.



Return of Inward Supplies

A read-only GST return auto populated from suppliers' outward return which presents the inward supplies / ITC for a tax period along with IGST on import of goods. It can be accessed after the due date of furnishing the details of the outward supplies and helps buyers verify and reconcile purchases to claim accurate ITC.



Monthly Return for Payment of Tax

Required to be filed by all taxpayers, a monthly self-declaration for furnishing summarised details of all outward supplies made, input tax credit being claimed, tax liability being ascertained and taxes paid. This is the only return through which tax payments are made.



IMS System

In October 2024, the Invoice Management System (IMS) was introduced (currently, on a voluntary basis) creating a functionality within the GST portal that enables recipients to actively manage incoming invoices. It allows businesses to accept, reject, or mark as pending the invoices uploaded by their suppliers in GSTR-1, GSTR-1A, or IFF. This mechanism ensures better control over input tax credit over ITC claims, as only validated and accepted invoices are considered for credit.



ISD Return

The ISD is responsible for proportionately distributing the eligible ITC to the respective branches / GST registrations of the business. This distribution is reported through a monthly return ensuring that ITC is accurately passed on to the relevant branches.



TCS Return

E-commerce operators are required to file returns for reporting details of TCS in relation to the supplies made through their platform by various sellers along with the relevant seller information on a monthly basis.

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[9] *Notification No. 13/2020 – Central Tax dated 21 March, 2020 (as amended from time to time)*
[10] *Chapter XVI, Central Goods and Services Tax Rules, 2017*

Annual Returns and Reconciliation Statement

The annual return and reconciliation statement must be filed by all regular taxpayers registered under GST crossing the prescribed threshold. It is a comprehensive summary of the financial year's GST transactions along with reconciliation with the books of accounts and is due by 31st December following the end of the relevant financial year.

GST Audits and Other Proceedings

GST Audits

It involves a thorough examination of a taxpayer's records, returns, and transactions to verify the correctness of turnover, taxes paid, input tax credit claimed, and refunds, while assessing overall compliance with GST provisions. Initiated by a prior formal notice, the audit follows a structured process including document review, on-site verification (if required), and communication of findings through a Final Audit Report.



Inspection

A preventive measure allowing GST officers to inspect any place of business if they have reason to believe that a person is suppressing transactions, evading tax, or contravening provisions of the CGST Act. It empowers officers to access business premises, review accounts, and verify documents to detect tax evasion and ensure compliance, without prior notice to the taxpayer.

Search and Seizure

Search and seizure go a step further than inspection, invoked when there is a reason to believe that goods liable for confiscation or documents relevant for proceedings are hidden. Officers can search premises, seize goods, books, records, or other things necessary for investigation.

Multiplicity and Duplication of Proceedings

Multiplicity of proceedings refers to the simultaneous or sequential initiation of different types of proceedings for the same set of facts, tax period, or issue – typically by GST officers of the State Government as well as GST officers of the Central Government. This often leads to overlapping notices, duplicate demands, and inconsistent findings, requiring taxpayers to litigate.

Labour Law Compliance

An employer is required to comply with the applicable provisions of labour and employment laws once it engages the minimum number of employees or workers specified under each statute. The applicability of these statutes is typically determined based on factors such as the employee headcount, the nature of the establishment (e.g., factory or commercial establishment), and the type of workforce engaged (e.g., permanent, fixed-term, contractual, or outsourced personnel). The detailed statutory compliance requirements triggered under each applicable enactment are set out as follows:

Employees' Provident Funds and Miscellaneous Provisions Act 1952

The EPF Act provides for contributions with respect to employees employed for wages in any kind of work, manual or otherwise, and includes persons employed by a contractor in connection with the work of the establishment. In the context of the EPF Act, an employer, with respect to an establishment, is the person who has ultimate control over the affairs of the establishment. Further, as mentioned earlier, the EPF Act applies to every establishment employing 20 or more persons, irrespective of whether they are permanent, temporary, or contractual employees drawing wages below a prescribed ceiling.

The EPF Act has also notified the EPF Scheme, EDLI Scheme and EPS Scheme (hereinafter collectively referred to as 'Schemes').

Under the Schemes, the employer is responsible for making the employee's contribution along with the employer's own contribution as well as the administrative charges and submitting an online electronic challan cum return (ECR) within 15 days of the close of each wage month. In this regard, the EPF Scheme requires the employer to contribute 12% of the basic wages (i.e., basic salary plus allowances which are ordinarily and uniformly payable to employees across the board), dearness allowance and retaining allowance (if any) drawn during a whole month (together, the 'total pay') payable by the employer to an employee who earns basic pay of no more than INR 15,000 per month. Equal contribution is required to be made from the salary of the employee. The employer is also required to pay administrative charges at the rate of 0.5% of the total pay.

An employee whose basic salary is more than INR 15,000 per month may choose to subscribe to the EPF Scheme. That being said, an employee who is already a member of the EPF Scheme continues to be a member even if his / her pay exceeds this monthly minimum, although the contribution may be computed at the rate of INR 15,000 per month as a statutory wage ceiling or on a higher amount, at the option of the employee.

Under the EPS Scheme and the EDLI Scheme, no contribution is required to be made on behalf of the employee, instead the EPS Scheme requires the employer to contribute monthly at the rate of 8.33% of the total pay, subject to a maximum cap on the contribution of INR 1,250 per month. The EDLI Scheme mandates the employer to

contribute monthly at the rate of 0.5% of the total pay, such contribution capped at INR 75.

The liability for making both employer and employee contributions is on the employer, and the contributions cannot be made directly by the employee. Accordingly, an employee's contributions are deducted from his / her salary by the employer and paid directly to the Employees' Provident Fund Organization.

Employees' State Insurance Act 1948

Under the ESI Act, employees earning wages up to INR 21,000 per month (or INR 25,000 in the case of employees with disabilities) are eligible to be enrolled under the scheme and avail the corresponding medical, maternity, and other social security benefits. For all such eligible employees, the employer is responsible for making timely contributions to the ESIC in respect of each wage period. These contributions must be made within 15 days from the end of the relevant calendar month and shall comprise contribution payable by the employer (at the rate of 3.25%) and contribution payable by the employee (at the rate of 0.75%).

The ESI Act becomes applicable to an establishment once it employs 10 or more persons, regardless of their individual salary levels. Upon crossing the employee threshold, the employer is required to obtain registration with the ESIC.

Payment of Bonus Act 1965

The Bonus Act is applicable to every establishment in which 20 or more persons are employed on any day during an accounting year.

The Bonus Act shall cover all employees earning a salary not exceeding INR 21,000 per month and having worked for not less than 30 working days in an accounting year.

The Bonus Act shall continue to govern an applicable establishment under the Bonus Act, notwithstanding that the number of persons employed therein falls below 20. In the context of the Bonus Act, an employer, in relation to an establishment, is any person who has ultimate control over the affairs of the establishment.



The provisions of the Bonus Act require every employer to pay to every employee in respect of an accounting year a minimum bonus of 8.33% of salary or wage earned by an employee during an accounting year, whether or not the employer has any allocable surplus in the accounting year. When in an accounting year, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer is bound to pay to every employee in respect of that accounting year, a bonus which shall be an amount in proportion to the salary earned by the employee during the accounting year, subject to a maximum of 20% of such salary.

Further, where the salary or wage of an employee exceeds INR 7,000, or the minimum wage for the scheduled employment as fixed by the state government, whichever is higher per month, the bonus shall be calculated assuming salary to be INR 7,000 or the minimum wage as fixed by the government, whichever is higher per month.

All amounts payable as statutory bonus should be paid by the employer within 8 months from the close of the accounting year. That said, for newly established establishments, no obligation to pay bonus applies for the first 5 years of operations if the employer has not derived any profit during those years. If profits are earned in any of these years, the bonus becomes payable in accordance with the provisions of the Bonus Act.

Payment of Gratuity Act 1972

Gratuity is a terminal benefit earned by an employee for services rendered. The right to receive gratuity and the liability to pay gratuity is a contingent right and liability. Gratuity becomes due for payment to the employee upon retirement or termination of service.

While a pension amount is usually payable periodically as long as the pensioner (retired employee) is alive, gratuity is paid only once as a lump sum on retirement or termination of the employment.

The Gratuity Act is applicable to all establishments where 10 or more persons are employed or were employed, on any day of the preceding 12 months. All employees, regardless of salary, are eligible to receive gratuity after rendering continuous service for not less than 5 years:

- On superannuation
- On retirement or termination
- On death or disablement due to accident or disease

Completion of continuous service of 5 years is not necessary where the termination of the employment of any employee is due to death or disablement.

For every completed year of service or part thereof in excess of 6 months, the employer shall pay gratuity to the employee at the rate of 15 days' wages (which would mean basic wages plus dearness allowance) based on the rate of wages last drawn by the employee concerned.

The formula for gratuity calculation

{(Basic pay x 15) / 26} x Number of years of service [Subject to the current statutory cap of INR 20,00,000]

Maternity Benefit Act 1971

- The MB Act is applicable to every factory or to every establishment employing 10 or more employees on any day of the preceding 12 months.
- Every woman who has completed 80 days' service in the previous 12 months is entitled to maternity leave (paid) of 26 weeks of which not more than 8 weeks shall precede the expected date of delivery. However, in the case of a woman with 2 or more surviving children, she will be entitled to 12 weeks of paid maternity leave.
- Additionally, women employees who are commissioning mothers or who have adopted a child below the age of 3 months are entitled to 12 weeks of paid maternity leave which can be availed when the child is handed over to such commissioning or adoptive mother.
- Paid maternity leave of 6 weeks will be applicable in case of a miscarriage or medical termination of pregnancy.
- In the case of women employees who experience illness arising from complications during their pregnancy, such employees will be entitled to extend their paid leave up to 4 weeks, subject to submission of a medical certificate. Also, women employees will be entitled to avail paid maternity leave of up to 2 weeks in case of a tubectomy operation, subject to submission of the medical certificate.
- Any termination of service (other than in case of gross misconduct) or adversely changing the terms of service or any action by the employer to deprive a woman of maternity benefit is prohibited.
- Every covered employer is required to formulate a detailed maternity leave policy encapsulating all the benefits available to an eligible women employee under the MB Act.

Minimum Wages Act 1948

The salary paid to an employee must be in accordance with the terms of the contract offered by his / her employer. However, under the MW Act, Central and state Governments have been authorised to fix a minimum salary for workers in certain jobs. The employer must ensure that the wages payable to employees are not less than the minimum rate fixed by the appropriate government. The MW Act applies to all employments specified in the schedule of the MW Act.

State-Specific Professional Tax Act

The PT Act is a state-specific legislation under which employers are required to deduct tax payable at the prescribed rates from salary / wages paid to employees monthly and pay the tax to the state government on behalf of the employees. The liability for making both employer and employee payment is on the employer. Accordingly, an employee's contributions are deducted from his / her salary by the employer and paid directly to the relevant state government.

State-Specific Labour Welfare Fund Act

The LWF Act is a state-specific legislation in several Indian states which requires both employers and employees to contribute specified nominal amounts periodically to the relevant state-specific labour welfare fund. The liability for making both employer and employee contributions is on the employer, and the contributions cannot be made directly by the employee. Accordingly, an employee's contributions are deducted from his / her salary by the employer and paid directly to the relevant Labour Welfare Fund.

Industrial Disputes Act 1947

The ID Act is the principal legislation governing the resolution of industrial disputes, as well as matters relating to retrenchment, layoffs, and termination of workmen category employees in India. For the purposes of the ID Act, 'workmen' refers to individual contributors or employees engaged in roles other than managerial or supervisory. The ID Act sets out detailed procedures for conciliation, adjudication, and dispute resolution.

Accordingly, an employee occupying a non-managerial position (workman) would, in addition to other statutory and contractual dues, be entitled to retrenchment (severance) compensation in accordance with the ID Act if he / she has completed 240 days in the establishment. Such compensation is typically computed at the rate of 15 days wages for each year of service of an workmen employee.

The Factories Act 1948 and S&E Acts

- These statutes govern the conditions of employment across different categories of workplaces. For clarity, please note that manufacturing premises or those falling within the criteria set out in Paragraph 1.2 will be governed by the provisions of the Factories Act, 1948. Conversely, non-manufacturing premises or establishments that do not meet the threshold for classification as a factory will fall within the purview of the applicable S&E Acts, as enacted by the respective State Governments.
- The Factories Act prescribes detailed standards relating to working hours, health and safety, welfare measures, overtime compensation, and other safeguards for workers employed in manufacturing establishments. In contrast, the S&E Acts regulate employment conditions in commercial and administrative establishments, covering aspects such as weekly holidays, leave entitlements, working hours, rest intervals, and termination-related provisions. Together, these statutes establish the foundational legal framework for ensuring fair and safe working conditions across manufacturing and non-manufacturing establishments in India.

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

- The POSH Act has been enacted in India with the objective of providing female employees protection against sexual harassment at the workplace (which includes any commercial establishment) and for the prevention and redressal of complaints of sexual harassment.
- The term 'sexual harassment' has been widely defined to include any unwelcome sexually determined behaviour (whether directly or by implication), including any physical contact and advances, demand or request for sexual favours, etc. The definition of 'employee' under the POSH Act is fairly wide and covers

  Regular

  Temporary

  Ad hoc employees

  Individuals engaged on daily wage basis, either directly or through an agent, contract labour

  Co-workers

  Probationers

  Trainees

  Apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied

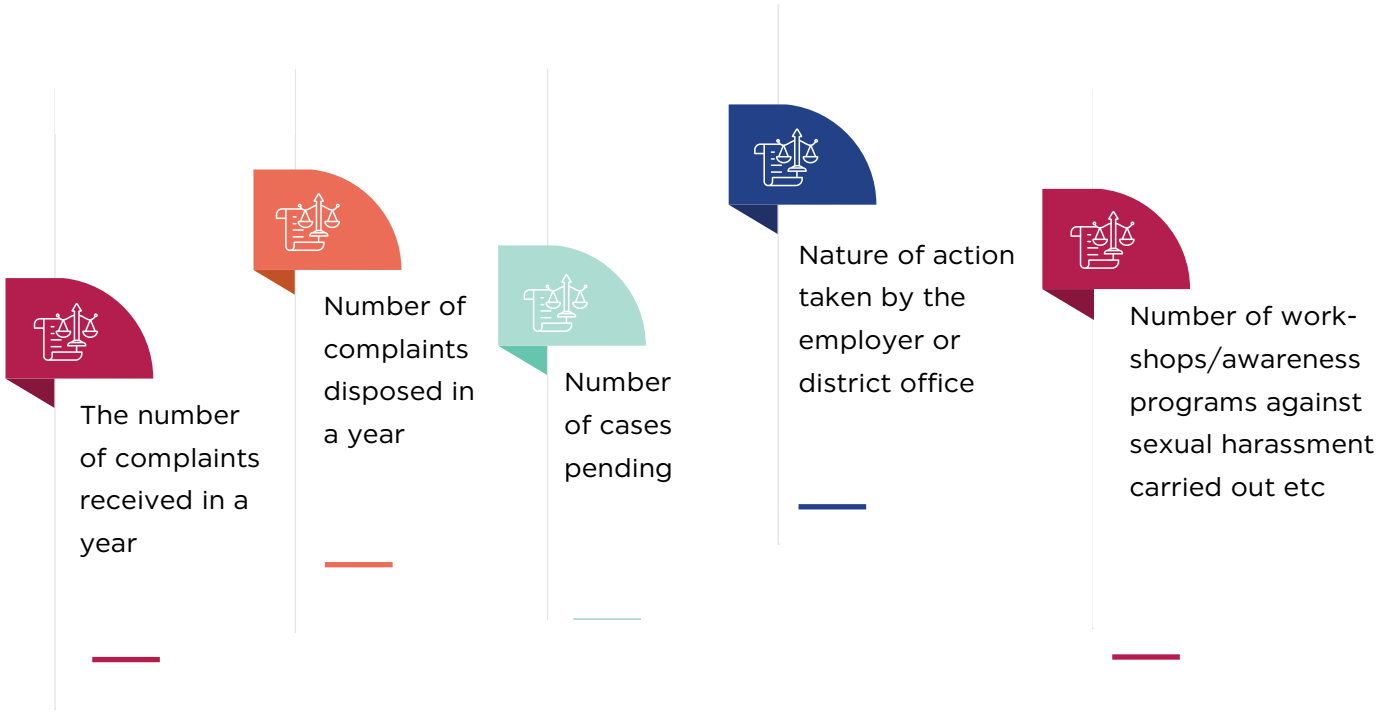
- The POSH Act mandates that the employer of every establishment employing 10 or more persons must form an internal committee (IC), in accordance with the composition provided under the POSH Act, for the redressal of any complaints a female employee may have in relation to any sexual harassment. The IC shall comprise of the following members:

A Presiding Officer who shall be a woman employed at a senior level at the workplace from amongst the employees

Not less than 2 members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge

1 member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. At least one-half of the total members so nominated shall be women.

- As per the POSH Act, every IC constituted by an establishment to inquire into and for redressal of complaints pertaining to sexual harassment, is required to submit an annual report setting out details of the following.



- At the end of every calendar year, the IC is required to submit such an annual report to the concerned regulatory authority.
- As per the POSH Act, the employer must provide support and guidance to the aggrieved woman and ensure that a fair inquiry is held in relation to the complaint. The employer is also required to widely disseminate a policy for the prevention of sexual harassment at the workplace.
- In addition to the above, the POSH Act also requires an employer to affix / prominently display the order constituting the IC and a notice detailing the penal consequences of sexual harassment at a conspicuous place within the workplace.
- Employers are also required to conduct regular awareness programs and training sessions to sensitize employees about sexual harassment, its consequences and the procedure for redressal.

Rights of Persons with Disabilities Act 2016

- The Disabilities Act has been enacted to provide equal opportunity to persons with disabilities in various fields such as education and employment. There are c ertain obligations under the law which apply to private establishments, irrespective of whether such establishments employ persons with disabilities, the idea being to require the

employer to lay down a framework in its workplace that encourages persons with disabilities to seek employment and enjoy a level-playing field therein.

- As per Section 21 of the Disabilities Act read with the rules framed thereunder, the employer is required to formulate an equal opportunity policy containing the measures that the establishment proposes to take in pursuance of the provisions of the Disabilities Act. Further, every private establishment employing 20 or more employees is required to frame a more detailed equal opportunity policy which provides for the following.



Facilities and amenities to be provided to the persons with disabilities

List of posts identified as suitable for persons with disabilities in the establishment

The manner of selection of persons with disabilities for various posts, post-recruitment and pre-promotion training, preference in transfer and posting, special leave, preference in allotment of residential accommodation, if any

Provisions for assistive devices and barrier-free accessibility

Appointment of liaison officer by the establishment to look after the recruitment of persons with disabilities.

- The employer is also required to register a copy of the said policy with the State Commissioner of each state wherein it is located i.e. Commissioner for Persons with Disabilities.

Sector-Specific or Exemptions for Newly Established Establishments and / or Startups



Self-Certification and Inspection Moratorium

Under the Startup India initiative, startups recognized by the DPIIT are permitted to self-certify compliance with certain labour laws in lieu of routine inspections. This relaxation is aimed at reducing the regulatory burden on newly established entities. Eligible establishments may self-certify their compliance through the Shram Suvidha Portal, and no labour inspections will ordinarily be initiated for a period of up to 5 years from the date of their incorporation, unless there is a credible, written complaint of a violation. The relevant legislations covered under such an initiative are as follows:

- Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996
- Inter-State Migrant Workmen Act, 1979
- Payment of Gratuity Act, 1972
- Contract Labour (Regulation and Abolition) Act, 1970
- Employees' Provident Funds Act, 1952
- Employees' State Insurance Act, 1948
- Industrial Disputes Act, 1947
- Trade Unions Act, 1926
- Industrial Employment (Standing Orders) Act, 1946

Exemptions Under State-Specific Startup Policies

In addition to central-level relaxations, several Indian states have introduced exemptions and procedural flexibilities under their respective startup policies. For instance, Karnataka, Telangana, and Maharashtra permit DPIIT-recognized or state-registered startups to self-certify compliance with certain labour laws, and in some cases, defer or simplify inspections and registration processes under local statutes such as the S&E Acts or CLRA.

Gujarat and Tamil Nadu have similarly introduced facilitative measures for early-stage entities. Given the diversity in state-level frameworks, it is advisable for startups to review the specific exemptions and compliance protocols applicable in each state prior to commencing operations.

Exemptions Relating to Employment of Women in Night Shifts

While traditionally and historically several state-specific S&E Acts or the Factories Act restricted the employment of women during night hours (typically between 7:00 PM and 6:00 AM), many states have introduced industry-specific exemptions. particularly for sectors such as IT/ITES, e-commerce, BPOs, and startups. For example, Karnataka, Maharashtra, Tamil Nadu, and Haryana have amended their respective S&E Acts or issued relevant notifications permitting women to work night shifts, subject to the implementation of prescribed safety measures such as workplace security, transportation arrangements, and written consent.

Accordingly, startups intending to operate late-night or in 24/7 shifts involving female employees should consult the applicable state notifications to confirm whether such employment is permissible and ensure implementation of all mandated protections.

Privacy, Data Protection, Intermediary Liability & Cybersecurity

Privacy & Data Protection – Present Day Law

The Information Technology Act 2000 (IT Act) and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 (SPDI Rules) issued under the IT Act are the present-day data protection laws in India on a sector-neutral basis.

Personal Information

The IT Act provides that any person who, while providing services under a lawful contract, has secured access to personal information about another individual and he discloses such personal information to another person (with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain) without the consent of the individual concerned, or in breach of a lawful contract, such person will be liable to a penalty which may extend upto INR 25,00,000 (Indian Rupees Twenty Five Lakhs).

Sensitive Personal Data or Information

As per the SPDI Rules, a body corporate (means any company and includes a firm, sole proprietorship or other association of

individuals engaged in commercial or professional activities, which could broadly include startups) that collects, possesses, deals or handles any Sensitive Personal Data or Information (SPDI) of individuals is required to comply with the obligations set out under the SPDI Rules. Under the SPDI Rules, the following categories of personal information have been designated as SPDI:

- Password
- Financial information such as bank account or credit card or debit card or other payment instrument details
- Physical, physiological and mental health conditions
- Sexual orientation
- Medical records and history
- Biometric information



The key obligations under the SPDI Rules are provided below

- **Privacy policy:** An entity that collects, receives, possesses, stores, deals or handles SPDI of an information provider, is required to publish a privacy policy on its website that addresses its handling of SPDI.
- **Consent and collection of SPDI:** For collection of SPDI, an entity is required to obtain consent in writing through letter or any mode of electronic communication from the provider of SPDI.
- **Reasonable security practices and procedures:** The IT Act mandates the following 'reasonable security practices and procedures' in relation to SPDI. An entity is considered to have implemented such reasonable security practices and procedures, if such entity has implemented security practices and standards, and has comprehensive and documented information security programme and policies that contain managerial, technical, operational and physical security control measures which are proportionate to the information assets that the entity is seeking to protect. The International Standard IS/ISO/IEC 27001 relating to 'Information Technology-Security Techniques-Information Security Management System–Requirements' is one of the standards specified under the SPDI Rules that may be implemented by the entity while handling SPDI.
- **Rights of information providers**: An entity is required to allow the information provider the right to:



Review or amend any SPDI

Withdraw consent at any point in time, in relation to the SPDI that has been provided

- **Grievance officer and redressal:** An entity is required to designate a grievance officer for redressal of grievances in relation to SPDI and publish the name and contact details of such officer on its website. The grievance officer is required to redress grievances and address discrepancies of information providers within a period of 1 (one) month from the date of receipt of the grievance.
- **Purpose limitation and retention:** An entity is not permitted to use SPDI for any reason other than those for which it has been collected and is not allowed to retain SPDI for a period longer than is required for the purposes for which the SPDI may lawfully be used or is otherwise required under any other law for the time being in force.
- **Transfer of SPDI:** An entity may transfer SPDI to any other entity, in India or overseas, that ensures the same level of data protection that is adhered to by the transferring entity, as provided for under the SPDI Rules. The transfer may be allowed only if:

  It is necessary for the performance of the lawful contract between the transferring entity and the information provider

  Where such information provider has consented to the data transfer

- **Disclosure of SPDI:** The SPDI Rules specify that apart from disclosure of SPDI sought by governmental agencies or where it is required for compliance with a legal obligation, the entity is required to obtain consent from the information provider, prior to disclosure of such information to a third party, unless such disclosure has been agreed to in an agreement between the parties.
- **Non-compliance:** The IT Act provides that where an entity, possessing, dealing or handling any SPDI, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such entity will be liable to pay damages by way of compensation to the person so affected.

Privacy & Data Protection – Upcoming Law



Upcoming Law

The Digital Personal Data Protection Act 2023 (DPDP Act) has been enacted as India's first comprehensive national legislation on privacy and data protection and aims to regulate the processing[11] of personal data. The DPDP Act is yet to come into force. It will be enforced as per the dates that would be notified by the Government of India. Once enforced, the DPDP Act will repeal the SPDI Rules. As opposed to the SPDI Rules, the obligations under the DPDP Act apply to the collection and processing of all types of personal data and not just SPDI.



Applicability

The DPDP Act will apply to personal data collected from data principals (i.e. individuals to whom the personal data relates to) within India if collected in

Digital form

Non-digital form and digitized subsequently.

[11] *Under the DPDP Act, the term "processing" in relation to personal data, means a wholly or partly automated operation or set of operations performed on digital personal data, and includes operations such as collection, recording, organisation, structuring, storage, adaptation, retrieval, use, alignment or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction.*

Further, the DPDP Act has an extraterritorial applicability and will extend to processing of digital personal data outside India, if such processing is in connection with an activity related to offering of goods or services to data principals within India.



The Key Obligations Under the DPDP Act are Provided Below

- **Legal basis for processing of personal data**: Data fiduciaries (i.e., any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data) will be required to process personal data pursuant to 2 (two) legal bases as permitted under the DPDP Act, which are

Consent

Certain legitimate uses (where consent is not required/exempted).

- **Privacy notice & Consent** : Prior to or at the time of seeking consent for collection of personal data from data principals, a privacy notice containing certain details including:

The personal data being sought and the purpose for which the same is proposed to be processed

The manner in which data principals may exercise their right to withdraw consent for personal data provided and the right of grievance redressal

The manner in which the Data Principal may make a complaint to the Data Protection Board of India (i.e. the supervisory authority under the DPDP Act). Data principals are required to be given an option to access the privacy notice in English or any language specified in the Eighth Schedule to the Constitution of India. Further, a data principals' consent will be required to be procured through a consent request. Such consent will be required to be free, specific, informed, unconditional, unambiguous, restricted to personal data necessary for the specified purpose, and obtained through a clear affirmative action. Every request for consent is required to be in a clear and plain language, and with the option to access such request in English or any language specified in the Eighth Schedule to the Constitution of India.

- **Certain legitimate uses:** Where obtaining consent is not feasible, personal data can continue to be processed if the purpose of such processing falls within the scope of the following 'certain legitimate uses' has been prescribed under the DPDP Act. A few of which are below:



For the specified purpose for which data principals have voluntarily provided their personal data to the data fiduciary, and in respect of which they have not indicated to the data fiduciary that they do not consent to the use of their personal data by the data fiduciary

For fulfilling any obligation under any law on any person to disclose any information to the Government or any of its instrumentalities, subject to such processing being in accordance with any other Indian law

For compliance with any judgment or decree or order issued under any law or order relating to claims of a contractual or civil nature under any law outside India

For the purposes of employment or those related to safeguarding the employer from loss or liability, such as prevention of corporate espionage, maintenance of confidentiality of trade secrets, intellectual property, classified information or provision of any service or benefit sought by the data principals who are employees.

- **Accountability for processing by data processors**: Data fiduciaries will be required to remain responsible for processing undertaken by them or on their behalf by data processors (i.e. any person who processes personal data on behalf of a data fiduciary) engaged by them. No specific compliance obligations have been imposed on data processors. Further, data fiduciaries may engage data processors only under a valid contract.
- **Data principal rights:** As applicable, data fiduciaries will be required to enable certain rights to be exercised by data principals, such as:

  Right to access information about personal data

  Right to correction and erasure of personal data

  Right of grievance redressal

  Right to withdraw consent

  Right to nomination

- **Technical and organisational measures:** Data fiduciaries will be required to implement appropriate technical and organisational measures to ensure effective adherence with the DPDP Act and rules to be issued there under.
- **Reasonable security safeguards**: Data fiduciaries will be required to implement reasonable security safeguards to protect personal data of data principals from any breach.
- **Personal data breach notification:** In the event of a personal data breach, a data fiduciary will be required to intimate the Board as well as the affected data principals.
- **Data Retention**: Data fiduciaries may retain personal data of data principals for as long as such retention is necessary for compliance with any law. Such personal data will be required to be erased when data principals withdraw their consent or as soon as it is reasonable to assume that the specified purpose for which the personal data was collected is no longer being served, whichever is earlier and data fiduciaries are also required to cause its data processors to erase any personal data of the data principals.
- **Cross-border transfer of personal data:** The DPDP Act provides that the Government of India may restrict the transfer of personal data by data fiduciaries for processing to such country or territory outside India as may be notified. Further, any law that provides for a higher degree of protection for / or restriction on transfer of personal data by an entity will take precedence.

- **Additional obligations for processing of children's personal data**: The DPDP Act mandates data fiduciaries to obtain 'verifiable consent' from parents / lawful guardians before processing personal data of children (i.e. an individual who has not attained the age of 18 (eighteen) years) or of persons with disability (who have a legal guardian). The DPDP Act casts a duty on data fiduciaries to not undertake behavioural tracking of children/ targeted advertising towards children. Exemptions may be given to data fiduciaries from the compliance requirements mentioned above. Further, data fiduciaries are not permitted to process personal data which is likely to cause any detrimental effect on the well-being of a child.
- **Additional Obligations on Significant Data Fiduciaries**: Data fiduciaries may be classified as Significant Data Fiduciaries' (SDFs) by the Government of India based on identified factors, such as volume and sensitivity of personal data processed, risk to the rights of data principals, etc. Such SDFs are required to comply with additional obligations such as, inter alia, appointment of a data protection officer residing in India, appointment of an independent data auditor, undertaking of data protection impact assessments. As of now, the list of such SDFs has not been released by the Government of India.
- **Startup Specific Exemptions**: The Government of India may exempt certain data fiduciaries or a class of data fiduciaries, including 'startups', from complying with specific obligations under the DPDP Act. As per the DPDP Act, a 'startup' means a private limited company or a partnership firm or a limited liability partnership incorporated in India, which is eligible to be and is recognised as such in accordance with the criteria and process notified by the department to which matters relating to startups are allocated in the Government of India. The specific obligations from which startups may be exempted from, inter alia, include:



Providing a privacy notice to the data principal before or at the time of seeking their consent for data processing

Adherence to rights of data principals

Obligations pertaining to SDFs

Erasing personal data when the data principal withdraws consent or when the specified purpose for processing the data is no longer being served, etc.

- **Non-compliance**: The DPDP Act prescribes strikingly high penalties, such as, inter alia, INR 2,50,00,00,000 (Indian Rupees Two Hundred Fifty Crores) for failure to take reasonable security safeguards to prevent personal data breach, INR 2,00,00,00,000 (Indian Rupees Two Hundred Crores) for failure to report personal data breaches to the Board and the affected data principals, etc.

Sector-Specific Laws

Startups operating in certain sectors may be subject to additional compliances under sector-specific laws such as those prescribed by the Reserve Bank of India (RBI) and the Insurance Regulatory and Development Authority of India (IRDAI), amongst other sectoral regulators in India. For instance, startups operating in the payments space may have to adhere to the requirements laid down by the RBI which requires system providers to ensure that the entire data (such as end-to-end transaction details) relating to payment systems operated by them are stored in a system only in India. Further, startups operating in the insurance space may be subject to the requirements of the IRDAI which requires insurers to store records pertaining to insurance policies and claims made in India to be held in data centres located and maintained in India.

Intermediary Liability



Concept of Intermediary

The IT Act defines an intermediary as 'any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes'. Therefore, startups which provide such services may fall under this definition.



Availing Safe Harbour Exemption

The IT Act provides for safe harbour exemption for intermediaries under the IT Act. The safe harbour exemption shields intermediaries from liability for third-party information, data, or communication links made available or hosted by them, provided certain conditions are met. To avail this exemption, the intermediary is required to ensure that:

Its function is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted

The intermediary does not:

i. Initiate the transmission
ii. Select the receiver of the transmission
iii. Select or modify the information contained in the transmission

The intermediary observes due diligence while discharging his duties under the IT Act and also observes such other guidelines as the Government of India may prescribe in this behalf, including the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (2021 Rules)



Losing Safe Harbour Exemption

An intermediary may lose its safe harbour status when (a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act, (b) upon receiving actual knowledge, or on being notified by the appropriate government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner, (c) non-compliance of the 2021 Rules.

Categories of intermediaries under 2021 Rules

In addition to intermediaries, the 2021 Rules provides for other various kinds of intermediaries and places obligations on each of them. These include:

- **Social media intermediaries:** An intermediary which primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services;
- **Significant social media intermediaries (SSMIs):** A social media intermediary having more than 50 (fifty) lakh registered users in India; and
- **Online gaming intermediaries (OGIs):** Any intermediary that enables the users of its computer resource to access one or more online games.

The Key Obligations Under the 2021 Rules for all the Intermediaries are Provided Below

- **Documents for users to be published on website, mobile app or both:**

The Rules and Regulations
Privacy policy
User agreement on the website, mobile application or both, for access/ usage of the intermediary's services by its users

Such documents must clarify that the users are restricted from hosting, displaying, uploading, modifying, publishing, transmitting, storing, updating or sharing certain information (as provided under the 2021 Rules). The rules and regulations, privacy policy and user agreement must be prominently published on the intermediary's website in English or in any language specified in the Eighth Schedule to the Constitution of India for access or usage by any person in the language of his choice.

- **Notice to users:** An intermediary is required to inform its users, periodically and not less than once every year, about its rules and regulations, privacy policy or user agreement and any changes thereunder, in English or in any language specified in the Eighth Schedule to the Constitution of India. Intermediaries are also required to convey to their users, periodically and not less than once every year, that the intermediary has the right to terminate the user's access or to remove the non-compliant information from the platform, in case of any non-compliance with its rules, privacy policy or user agreement.
- **Disabling content within 36 hours of government / court order:** All intermediaries are restricted from storing, hosting or publishing unlawful information which is prohibited under any law for the time being in force, in relation to, inter alia, the interest of the sovereignty and integrity of India, security of the State, etc. In case such unlawful information is hosted, stored or published, the intermediary must remove or disable access to such information as early as possible, but within 36 (thirty-six) hours of being directed to do so by a court order

or being notified by a government agency.

- **Preservation of records for 180 days:** An intermediary is required to maintain records of content which has been removed or access to which has been disabled, for a period of 180 (one hundred and eighty) days, or such longer period as may be required by a court or duly authorised government agencies. User-information collected for registration is required to be preserved for 180 (one hundred and eighty) days after cancellation / withdrawal of such registration.
- **Reasonable security practices**: An intermediary is required to take all reasonable measures as prescribed under the SPDI Rules.
- **Report cyber security incidents:** An intermediary is required to report cyber security incidents and share related information with the Indian Computer Emergency Response Team (CERT-In) in accordance with applicable laws.
- **Grievance Redressal**: Details of the grievance officer (name and contact details), and the grievance redressal mechanism are required to be prominentlypublished on the website, mobile app or both of an intermediary, by which a user or a victim may make a complaint against violation of the provisions of the 2021 Rules or any other matters. The grievance officer is required to acknowledge a complaint within 24 (twenty-four) hours and resolve all complaints within 15 (fifteen) days. However, where a complaint is for removal of information or communication link relating to certain kinds of information (e.g., where information which belongs to another person and to which the user has no right), it will have to be acted upon as expeditiously as possible and resolved within 72 (seventy two) hours.

  Any person who is aggrieved by a decision of the grievance officer or whose grievance is not resolved within the specified period under the 2021 Rules may prefer an appeal to the Grievance Appellate Committee within a period of 30 (thirty) days from the date of receipt of communication from the grievance officer.
- **Disabling of explicit content within 24 hours:** An intermediary is required to remove or disable access to all explicit content (such as content which exposes an individual's private area, shows the individual in full / partial nudity or in a sexual conduct or is in the nature of impersonation in an electronic form, including artificially morphed images of an individual), within 24 (twenty four) hours of receipt of a complaint from the aggrieved individual or any person on his/her behalf.



- **Respect for user rights:** An intermediary is required to respect all rights accorded to the citizens under the Constitution of India, including the right to equality (Article 14), the right to freedom of speech and expression (Article 19), and the right to protection of life and personal liberty (Article 21).
- **Additional obligations for SSMIs and OGIs**: The SSMIs and the OGIs have certain specific compliance requirements under the 2021 Rules, which, inter alia, includes:



Appointment of a Chief Compliance Officer who would be responsible for statutory compliance

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Appointment of a Nodal Contact Person for 24x7 coordination with law enforcement agencies and officers

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Appointment of a Resident Grievance Officer

Publishing periodic compliance report every month containing details such as complaints received and action taken thereon and other relevant information

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Have a physical contact address in India published on its website, mobile application or both, as the case maybe for the purposes of receiving communication addressed to it

- **Non-compliance:** Non-compliance with the applicable provision of the IT Act and the 2021 Rules may lead to an intermediary losing its safe harbour status and be liable for punishment under any law for the time being in force including the IT Act and the Indian Penal Code 1860 (now the Bharatiya Nyaya Sanhita 2023).

Cybersecurity

The CERT-In had issued a direction on 28 April 2022 (CERT-In Direction) under the IT Act relating to information security practices, procedure, prevention, response and reporting of cyber incidents for safe and trusted internet.

The Key Obligations under the CERT-In Direction have been provided below:

- **Reporting of cyber incidents:** Certain specified types of cyber incidents (such as, inter alia, targeted scanning / probing of critical networks / systems, compromise of critical systems/information, unauthorised access of IT systems / data etc) as identified under Annexure I of the CERT-In Direction are to be mandatorily reported to the CERT-In by, inter alia, service providers, intermediaries, body corporates (which could also include startups) (Covered Entities), within 6 (six) hours of noticing such incidents or being brought to notice about such incident.
- **Synchronisation of information and communication technology (ICT) system clocks:** All Covered Entities are required to connect to the Network Time Protocol (NTP) Server of National Informatics Centre (NIC) or National Physical Laboratory (NPL) or with NTP servers traceable to these NTP servers, for synchronisation of all their ICT systems clocks.

- **Enabling and retention of logs:** All covered entities are to mandatorily enable logs of all their ICT systems and maintain them securely for a rolling period of 180 (one hundred and eighty) days within the Indian jurisdiction. These should be provided to CERT-In along with reporting of any incident or when ordered or directed by the CERT-In.
- **Appointment of Point of Contact (POC):** Covered entities have to designate a POC to interface with CERT-In. The information relating to a POC is required to be sent to the CERT-In in the format specified by the CERT-In.
- **Non-compliance:** Non-compliance with the CERT-In direction may lead to punishment with imprisonment for a term which may extend to 1 (one) year or with fine which may extend to INR 1,00,00,000 (Indian Rupees One Crore only) or with both.

COMMON PITFALLS

Tax

Startups and small businesses frequently face tax compliance challenges due to lack of awareness, improper documentation, and poor structuring. Many founders focus on business operations but at times lose sight of undertaking necessary registrations, filing requirements, or which tax laws apply to them. This can result in penalties or more stringent legal scrutiny.

Income-tax Returns

Filing of the income tax return is a statutory obligation for all companies and LLPs in India. The common due date to file the tax return is 31st October of the succeeding year, for PLC and LLPs (who are subject to tax audit). If the LLP is not liable for tax audit, the due date will be 31st July. If transfer pricing applies, the due date to file the income tax return extends to 30th November.

Tax Audit

As per Section 44AB of the Income Tax Act, a tax audit is mandatory for entities if business turnover exceeds INR 1 crore. The threshold increases to INR 10 crore if the cash receipts and payments are less than 5% of total receipts and payments respectively. The tax audit report is required to be filed by 30th September of the relevant year.

TDS Compliances

The Indian Startup is required deduct tax at source on various payments such as salary, contractual fee, rent, commission, professional fee, technical fee and consultancy fee. TDS is required to be deposited within 7th of the succeeding month or 30th April, if the TDS pertains to the month of March. To ensure the recipients are able to claim the credit of TDS, the Startup is required to file the withholding tax return on quarterly basis and thereafter, generate and issue a withholding tax certificate to such recipient.

Transfer Pricing

If the startup has undertaken a transaction with any of its overseas affiliates, the provisions of

transfer pricing would apply requiring such transactions to be undertaken at arm's length. The arm's length determination should be adequately documented in the transfer benchmarking analysis. Further, the Startup would be required to file Form 3CEB by 31st October of the relevant year.

GST

Common pitfalls include failure to maintain proper records of receipt / supply of goods / services, incorrect or delayed return filings, and choosing unsuitable business / transaction structures that result in scrutiny from tax and regulatory authorities. Attempts to bypass compliance through shortcuts or evasive tactics are increasingly risky in today's tech-enabled, data-integrated tax environment. A proactive, honest, and informed approach to tax compliance is essential for long-term sustainability and growth.

Corporate and FEMA

Failure to recognize applicability

FEMA is applicable as soon as shares are issued to a non-resident, whether its an institutional investor, or a Founder / friend / family / angel investor who is a non-resident under FEMA. In such cases, the conditions under FEMA pertaining to pricing, sectoral caps and conditions, and reporting requirements are all applicable at the time of issuance, and further FEMA compliances (such as FLA) become applicable to the Company. Founders should have a clear idea (substantiated with documentation) on the residential status of each shareholder at the time of allotment of shares.

Instrument and Valuation Issues

The instruments which can be issued to foreign shareholders are subject to certain restrictions under FEMA. FEMA imposes various conditionalities on foreign debt funding (external commercial borrowings), with which Silicon-valley style SAFE notes typically do not comply. Further, issuance must be in accordance with the pricing guidelines under FEMA. Early-stage companies often rely on informal post-money pitch valuations or issue shares at nominal value to foreign co-founders. To mitigate this, for allotments to non-residents, a formal valuation report should be obtained, CCPS should be used as the default instrument for fundraising, and hybrid convertible arrangements that could be treated as external commercial borrowings should be avoided.

Sectoral Restrictions

Companies often overlook sectoral restrictions, particularly in businesses touching fintech, telecom, insurance, gaming, defence,



news media or education. Each business activity undertaken by the company must be reviewed, including ancillary or incidental revenue streams, as FEMA does not distinguish between primary and secondary activities. The company should confirm the correct sector classification and FDI route before signing investment documents and, in regulated sectors, obtain legal clearance before issuing any binding term sheet.

The company should also conduct the analysis for Press Note 3 compliance prior to identifying sources for foreign funding.



Documentation

Documentation issues arise because FEMA filings require specific supporting evidence such as valuation reports, FIRC and KYC documents, share allotment registers, board and shareholder approvals and documented terms of securities. When records are disorganised or incomplete, filings are delayed or rejected. The company should maintain all CAP table and fundraising records in a central data room, use standard templates for issuance steps and resolutions, and designate a compliance owner or external company secretary to run the process consistently.



Section 89 – Beneficial Ownership Disclosure

Startups commonly fail to file declarations under Section 89 when shares are held through nominees or on behalf of beneficial owners, particularly in Founder arrangements or early-stage investments.



Section 90 – Significant Beneficial Ownership (SBO)

Non-compliance arises where founders or investors hold indirect control or ownership (e.g., through foreign entities or layered structures) without making necessary SBO filings, as required under Section 90 and the SBO Rules.



Stamp Duty on Share Issuance / Transfers

Stamp duty is often overlooked on the issuance of shares (including on share certificates and share subscription agreements) and on transfer instruments, especially in intra-founder or early investor transactions.



Secretarial Compliances

Startups frequently neglect to maintain statutory registers, issue share certificates in a timely manner, and record board / shareholder resolutions. Mandatory filings such as DIR-12 (for director appointments) and PAS-3 (for allotments) are also commonly delayed or missed.



Other Common Lapses

Additional gaps include failure to appoint the first auditor within prescribed timelines, delays in filing INC-20A (commencement of business), and non-maintenance of a proper registered office or signage, all of which attract penalties.

Data Privacy

Startups deploying AI should ensure algorithmic transparency, bias mitigation, and accountability documentation (Currently advisory, but increasingly enforced in public procurement).

Limited Resources

Startups may operate with limited financial, technical, and human resources, which can make it difficult for them to invest in strong data protection, content moderation and cybersecurity frameworks.

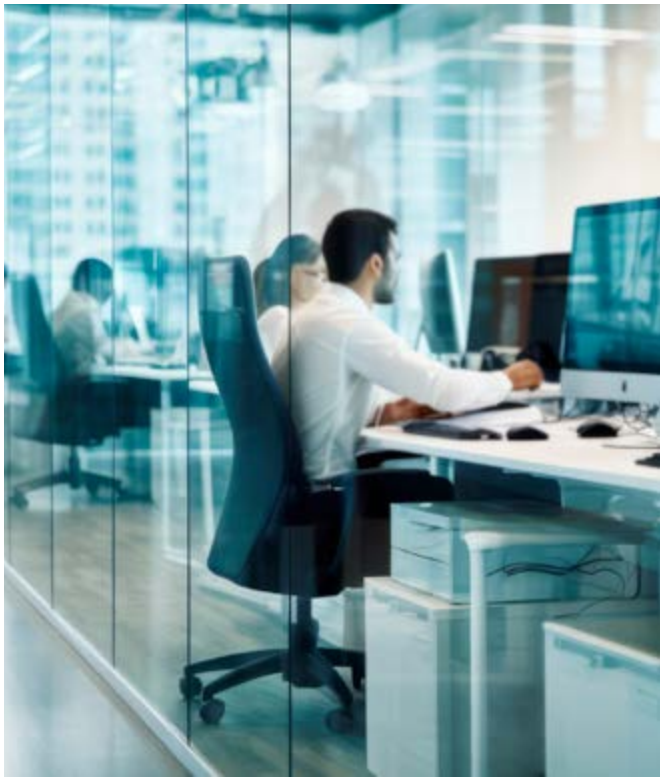
Insufficient Training and Awareness

Startups may lack basic cybersecurity and data protection training.

Insufficient Regulatory Compliances

Startups may overlook or inadequately implement mandatory regulatory compliances, exposing them to legal risks and potential penalties. Some indicative examples include:

- Inadequate or unclear privacy notices
- Absence of (or inadequate) terms of use, user agreements, privacy policies on websites / mobile apps (as applicable) and not having adequate disclosures / cookie banners
- Improper consent management framework (e.g. obtaining pre-checked consents)
- Over-collection of personal data beyond what is necessary
- Failure to execute valid, appropriate / legally insulating contracts with third-party data processors
- Weak technical and organizational security, technical safeguards
- Lack of processes to handle data principal rights requests (such as access, correction, erasure, consent withdrawal)
- Improper or excessive data retention practices
- Processing children's data without appropriate parental consent
- Engaging in behavioural tracking or targeted advertising towards children
- Lack of an established personal data breach notification process or cybersecurity incident handling / response procedure
- Inadequate cybersecurity infrastructure
- Overlooking cross-border data transfer restrictions / data localisation norms (especially if such startups are regulated by sectoral norms)
- Absence of an effective grievance redressal mechanism; or non-compliance with grievance redressal timelines



- No proper mechanism for timely disabling of unlawful content
- Failure to conduct regular audits and risk assessments to identify and fix privacy and security gaps

Employment, Labour, Benefits

While most statutory obligations under Indian labour laws are reasonably well-defined, several businesses, particularly newly established employers encounter challenges in ensuring timely and effective compliance.

These issues are seldom the result of willful default but often stem from the fragmented, state-specific nature of India's labour regulatory framework and the absence of a unified compliance mechanism. Some of the common pitfalls include.



Incorrect Salary Base for Employee Contributions / Payments

A recurring compliance issue relates to the improper computation of statutory dues such as EPF contributions and leave encashment amounts on an incorrect or deficit salary base. Employers often restrict EPF contributions to the 'basic salary' component alone, overlooking the requirement that the salary base reckoned for payment of EPF contributions should account for all universally, ordinarily and uniformly paid allowances (e.g., conveyance, special allowance, etc.) for employees with a monthly basic salary of INR 15,000 (Indian Rupees Fifteen Thousand) or less, as prescribed under relevant judicial precedents in this regard.

Similarly, for leave encashment, many employers compute payouts solely on the basic salary, despite statutory provisions (under applicable S&E Acts and Factories Act) requiring encashment to be computed on the last drawn 'gross' or fixed salary, excluding only overtime or bonus amounts so payable.



Failure to Effectuate Mandatory Implementation of Employment Policies

Employers frequently overlook the statutory requirement to formally adopt and communicate workplace policies mandated under applicable law, such as the anti-sexual harassment policy required under the POSH Act, or an equal opportunity policy under the Disabilities Act and the Transgender Persons Act, among others.

In addition, leave policies and related employment terms are often implemented by employers based on managerial preference or market practice, without adequate reference to the minimum entitlements prescribed under the Factories Act or relevant S&E Acts. The absence or misalignment of such policies can lead to compliance gaps and scrutiny during audits, inspections, or employee disputes.



Inconsistent State-Level Practices

Given that several key labour laws (such as the S&E Acts, PT Acts, and LWF Acts) are administered at the state level, their thresholds and procedural requirements often vary significantly. Many employers adopt a uniform, centralized approach to compliance, resulting in inadvertent non-compliance with local registration, return filing, and contribution obligations across different states.

No Oversight of Contract Workers

Even when the workforce is outsourced to third-party vendors or contractors, the principal employer remains legally responsible for ensuring compliance with applicable labour laws.

Many establishments fail to verify whether their contractors are appropriately registered or licensed under the CLRA, or whether they are complying with minimum wage, and other statutory obligations in respect of contract workers so deployed. This oversight may expose the principal employer to penalties and liability for defaults by the contractor.

Trust, Transparency & Accountability – Thinking Beyond Compliance

To Keep Company's MOA & AOA Aligned and Updated

The MoA and AoA are the fundamental documents of the company. They define the company's objective, governance, and operational framework. It's important to:

Regularly review and update these charter documents to incorporate any changes in business activities, shareholding patterns, or regulatory requirements

Ensure consistency between the MoA, AoA, and other corporate filings and records to avoid any discrepancies

This approach not only guarantees compliance but also shows a commitment to good governance

Maintain an Updated and Transparent Website

The company's website serves as a primary point of contact for stakeholders, including investors, employees, and customers. To foster trust the company should:

- **Keep all information updated:** Regularly update details about company's products, services, leadership team, and financials.
- **Ensure accuracy:** Verify that all content is factual and reflects the company's current status.
- **Be transparent:** Provide clear information about company policies, governance, and any significant changes.
- An updated and transparent website builds reliance and trust with the company's audience.

Hold Regular Meetings and Maintain Proper Documents

Schedule Meetings Consistently

Whether quarterly or bi-annually, ensure regular touchpoints to discuss company performance and strategic direction.

Agenda Notes for Meetings of the Board and Committees

In order to fulfil their responsibilities, Board of Directors must have access to accurate, relevant and timely information. The agenda notes must therefore be presented with detailed and relevant data, scope of the proposed decision, as well as a draft of the proposed resolution. Copies of any presentations should be provided to the board along with the meeting notice.



Minutes of the Meetings

The minutes of the board and committee meetings must be detailed and comprehensive. The minutes should contain a fair and correct summary of the proceedings, including the questions raised, responses, different viewpoints presented at the meeting. This will facilitate the demonstration of the directors' participation, and exercise of skill, diligence and independent judgment by the directors.



Share Outcome

Distribute meeting minutes to relevant parties to maintain transparency. Regular meetings and well-documented decisions promote account-ability and informed decision-making.

Secure Directors & Officers (D&O) Insurance

D&O insurance protects the personal assets of the company's directors and officers in case of legal actions arising from their decisions.

- **Safeguard personal assets:** Protect leadership from personal financial loss due to lawsuits.
- **Attract and retain talent:** Offering D&O insurance can make leadership roles more appealing.
- **Enhance investor confidence:** Investors often view D&O insurance as a sign of prudent risk management.

While not mandatory in India, having D&O insurance can be a strategic move for startups.

Formulating Organisational Policies

The Founders should formulate and adopt policies for various types of corporate decisions and aspects of managing transactions.



Decision-Making

The policies assist organizations and groups to move away from ad-hoc decision making to a more scientific and consistent approach. This ensures that decision-making is objective, data-driven, consistent, and the outcomes are predictable.



Review of Policies

The policies should be reviewed at least once in two-three years for updation or improvement. It is necessary for the boards to certify that the policies are adequate and appropriate and that they operate effectively throughout the reporting period. The agility of the boards of directors to review the policies to update and upgrade the policies based on events or experiences would be essential to demonstrate that the boards functioned decisively and effectively.

Familiarisation Programs on Regulatory Updates

The directors should be imparted with familiarisation programs for regulatory updates and policy changes in relevant jurisdictions. One of the annual board meetings should include this as a mandatory agenda item.

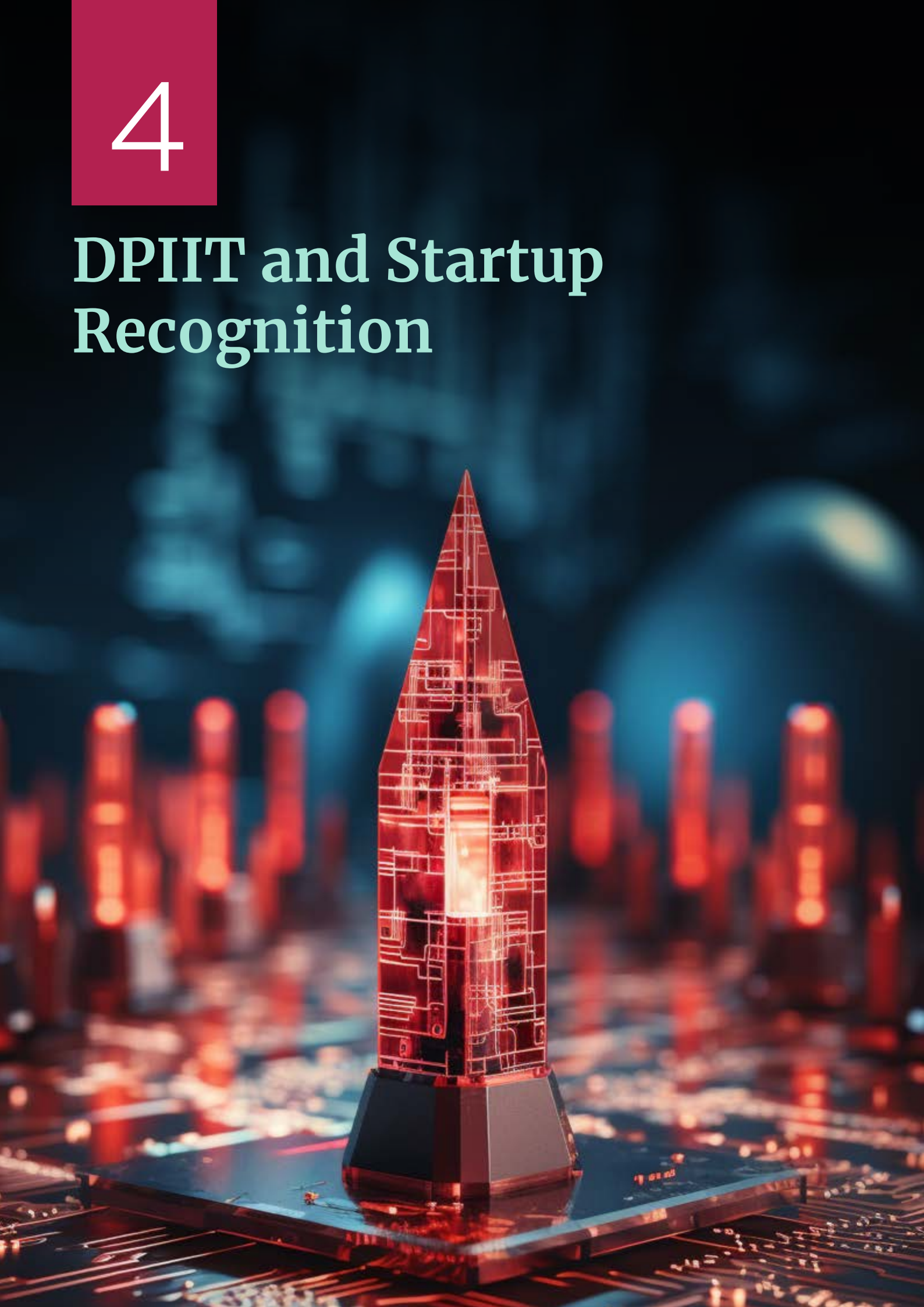
Conclusion

Beyond merely following the law, a culture of trust, openness, and accountability must be established. A Company should create the platform for long-term success and stakeholder trust by proactively managing the company's foundational documents, keeping an accurate internet presence, holding frequent meetings, and obtaining the right insurance.



4

DPIIT and Startup Recognition



Startup India DPIIT Recognition – Eligibility, Process

Overview of DPIIT Recognition

DPIIT Startup Recognition is an official endorsement confirming that a business aligns with the government's definition of a Startup. The goal is to allow such entities to benefit from simplified regulatory processes and gain access to tax incentives and other forms of support aimed at nurturing innovation in India. Applications are submitted via the National Single Window System (NSWS) at [nsws.gov.in]

Criteria

To qualify, a business must meet both objective (quantitative) and subjective (qualitative) benchmarks:

Objective Requirements

Entity Age: Recognition applies to startups within 10 years of incorporation.

Legal Structure: Must be a private limited company, partnership firm, or LLP.

Turnover Threshold: Annual turnover must not have surpassed INR 100 crore in any financial year since incorporation.

Originality of Business: Entities that have emerged from division or reconstitution of existing businesses are ineligible.

Subjective Requirements

Innovation Focus: The startup must engage in developing or enhancing products, processes, or services.

Scalability & Economic Impact: The business model should demonstrate potential for job creation or wealth generation.

Application Procedure

Online Application

Startups must apply via the NSWS platform by creating an account and selecting the form titled 'Registration as a Startup.'

Required Documents

- Certificate of Incorporation or Registration
- **Business Description:** A document outlining innovation efforts, business model, and expected impact.

Review and Recognition Process

Upon submission, DPIIT may request additional documents. Based on evaluation, the business is either granted recognition or declined with a reasoned explanation.

Disqualification Conditions

Startups may not be recognised under the following circumstances:

- Formed through mergers, acquisitions, or business restructuring (except when merging with another DPIIT-recognised startup or qualifying small company)
- Created under compromise or arrangement schemes
- Operate as holding / subsidiary companies or joint ventures
- Incorporated outside India or have less than 51% Indian ownership
- Share similar structure, location, or leadership with another startup for duplicate benefit claims
- Operate in prohibited industries
- Operate as sole proprietorships (unless converted into an eligible entity type)

Startup India Seed Fund Scheme (SISFS)

The SISFS is intended to help startups that face funding difficulties at the earliest development stages. It supports activities such as prototype creation, proof-of-concept testing, product validation, and market entry. Funding is disbursed through approved incubators.

Eligibility Criteria

- The startup must obtain DPIIT recognition prior to applying for support under the scheme.
- The startup must have been incorporated within the last two years from the date of application.
- The applicant must propose a business idea that is commercially viable and shows potential for scalability and growth.
- The startup is required to demonstrate that technology is integral to its product, service, business model, or distribution strategy.
- The applicant must not have received more than INR 10 lakh in financial assistance under any other Central or State Government scheme, excluding prize money, subsidised workspaces, founder stipends, or access to prototyping facilities.
- The startup must ensure that at least 51% of the equity is held by Indian citizens at the time of application.
- A startup is eligible to receive seed funding only once through the SISFS; repeat applications for seed support are not permitted.



Application & Selection Process

- The startup must submit an application to up to three incubators via the Startup India portal, indicating preference.
- The startup must upload a complete application, including a team profile, problem statement, product overview, business model, customer segment, market size, funding requirements, and a detailed fund utilisation plan.
- Applications will be evaluated by the Seed Management Committee (SMC) of the chosen incubators, based on factors such as innovation, feasibility, team strength, market potential, and impact.
- If selected, the startup will receive seed funding from the highest-ranked incubator among their selected preferences.
- No application, selection, or monitoring fees are charged at any stage of the process. Startups whose applications are not selected may reapply in future calls.

Fund Of Funds For Startups (FFS)

The FFS is a INR 10,000 crore initiative managed by SIDBI on behalf of DPIIT. Unlike direct funding, the FFS channels capital to SEBI-registered AIFs, which then invest in DPIIT-recognised startups.

Objective and Structure

The FFS empowers AIFs to fund startups across early, seed, and growth stages. This indirect model leverages the sectoral expertise of fund managers while ensuring capital flows to diverse industries.

Eligibility

- The startup must secure DPIIT recognition before approaching an Alternative Investment Fund (AIF) supported under the Fund of Funds for Startups (FFS) initiative.
- The startup must retain its recognised startup status as per DPIIT guidelines throughout the entire investment period. Loss of this status may disqualify the startup from continued support.
- The startup's business model, sector, and stage of development must align with the investment mandate of the specific AIF it is applying to. Each AIF has its own investment focus, and startups must ensure compatibility.

Process of Accessing FFS-backed Capital

- AIFs apply to SIDBI and, upon clearance, enter a funding agreement.
- They raise additional capital from private investors.
- Startups approach these AIFs directly with investment proposals.
- AIFs conduct due diligence and invest using equity instruments.
- SIDBI monitors fund utilisation and performance through regular reporting.

Tax Incentives for Recognized Startups



Tax Exemption

As per Section 80-IAC of the Income Tax Act, DPIIT-recognized startups are eligible to claim tax holiday at 100% of their business income for any three consecutive years out of ten years beginning from the date of incorporation, subject to satisfaction of following conditions:

- The startup must be a private limited company or LLP incorporated after 1 April 2016 but before 1 April 2030.
- Annual turnover should not exceed INR 100 crore for the year in which tax holiday is being claimed.
- The Startup should be engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation.



Carry Forward of Tax Loss

Under the Income Tax Act, the startup is generally eligible to carry forward the unabsorbed tax loss for the prescribed period (8 years in case of business losses or capital loss). However, Section 79 restricts the right to set off the carried forward losses in the case of a closely held company, unless the shares with at least 51% voting rights are held by the same shareholders as on

A. The last date of the year in which the losses were incurred

B. Last date of the year in which the losses are proposed to be set off

To protect Startups which might see a continuous change in shareholding on account of fund raising, Section 79 carves out an exception for DPIIT-recognized startups, where losses can be carried forward and set off even if there is a change in the 51% shareholding provided the shareholders who held shares in the year of incurring the loss continue to hold shares in the year of set-off.



Inter-corporate Dividend Deduction

Section 80M of the Income Tax Act allows a deduction for dividends received by an Indian company, if such dividend is distributed further to its shareholders (until 1 month prior to the due date of filing the income tax return by the company). The inter-corporate dividend deduction avoids the dividend income being taxed at multiple levels and eliminates the cascading effect.



ESOP Tax Deferral

Under Section 192 of the Income Tax Act, employers are required to deduct tax at source on salary income, which includes income earned by means of shares acquired under an ESOP scheme. However, Section 192(1C) carves out an exception for shares issued by a Startup to its employees under an ESOP scheme, wherein the obligation to withhold tax at source is deferred to earlier of:

60 months from the end of the financial year in which the shares were issued

The date of sale of such shares by the employee

The date of the employee ceasing to be an employee

Credit Support Schemes

Credit Guarantee Scheme For Startups (CGSS)

The Credit Guarantee Scheme for Startups (CGSS) is an initiative introduced by the Government of India. It is administered by the Department for Promotion of Industry and Internal Trade (DPIIT) under the Ministry of Commerce and Industry. The scheme is designed to facilitate collateral-free debt funding for eligible startups, providing liquidity while relieving founders of the burden of providing security for such loans.

The scheme is managed by the Credit Guarantee Fund for Startups (CGFS), which operates under the National Credit Guarantee Trustee Company Limited (NCGTC). Through the CGFS, credit guarantees are issued to financial institutions, referred to as Member Institutions (MIs), that extend loans to startups. In case of a default by the startup, the guarantee from the CGFS will cover a portion of the loan with the MI. A wide range of financial instruments such as venture debt, working capital, subordinated debt, debentures, optionally convertible debt, and other fund-based and non-fund-based facilities that give rise to debt obligations may be covered by a guarantee under the CGFS.

Types of Guarantee Cover

- **Transaction-based Guarantee Cover:** Provides a guarantee for a single eligible borrower (startup).
- **Umbrella-based Guarantee Cover:** Offers a guarantee for a group of eligible borrowers, typically accessed by a lending or investing institution for a portfolio of startups, often through a Venture Debt Fund (VDF).

Guarantee Limit

The maximum guarantee cover available to any single borrower (startup) under the scheme is capped at INR 20 crore.

Eligibility Process

Startups seeking CGSS-backed loans must meet both objective and subjective criteria:

- **DPIIT Recognition:** The entity must be officially recognised as a startup by DPIIT.
- **No Existing Defaults:** The startup should not be in default with any financial institution.
- **Not a Non-Performing Asset (NPA):** The startup's accounts must not be classified as NPAs under RBI guidelines.
- **MI Certification:** The MI considering the loan must certify the startup's eligibility for the guarantee cover after conducting its own assessment and due diligence.



Procedural Requirements and Registration

Startups do not apply directly to the CGSS. Instead, the guarantee is facilitated through an eligible MI. The general process is as follows:

- **Approach an Eligible MI:** Startups may apply for a loan or debt facility from an eligible financial institution (e.g., Scheduled Commercial Bank, qualifying NBFC, or AIF). The scheme applies to loans sanctioned on or after the scheme's notification date.
- **Due Diligence by MI:** The MI will assess the credit application using commercial prudence, evaluating factors such as DPIIT recognition, existing defaults, and NPA status. This includes a review of the startup's business plan, financial projections, and overall viability.
- **Certification by MI:** Upon satisfaction, the MI certifies the startup's eligibility for CGSS and the loan's suitability for guarantee cover.
- **Obtaining the Guarantee:** After loan sanction, the MI procures the guarantee from the NCGTC by paying the required fee.
- **Sector-Specific Incentives:** The scheme provides preferential guarantee fee rates for startups operating in the 27 Champion Sectors identified by the Ministry of Commerce and Industry under the 'Make in India' initiative. In such cases, the Annual Guarantee Fee (AGF) payable by the MI is 1% per annum of the loan amount, compared to 2% (standard rate) or 1.5% (for North East-based startups or women-led enterprises). This may incentivise MIs to extend loans to startups in sectors such as Aerospace and Defence, Food Processing, IT Services, and Financial Services.



5

Intellectual Property & Innovation



Intellectual Property (IP) protection is important for startup companies as it secures the core innovations, brand assets, and competitive differentiators that drive early-stage value. By proactively safeguarding IP - through patents, trademarks, copyrights, designs or trade secrets, startups can prevent misappropriation, build investor trust, and create valuable assets that support licensing, partnerships, and future fundraising.

Trademark, Patent, Copyright Basics

Patents

Patents grant exclusive rights to inventions (both products and processes) that are novel, demonstrate a non-obvious technical advancement, and have industrial applicability.

A patent application can be filed by natural persons, small entities, Startups or others, with reduced official fees for the first three categories. The application undergoes substantive examination, and expedited examination may be requested under certain conditions. The application is ordinarily published after 18 months from filing, with the option to request early publication. Opposition can be filed pre-grant (by any person) or post-grant (within one year of grant, by a person interested).

Patent protection typically lasts for 20 (twenty) years from the filing date, contingent on the timely payment of annual renewal (annuity) fees.

Post-grant, revocation proceedings are also possible. Enforcement is through civil suits before appropriate courts, with remedies including injunctions, damages, and seizure or destruction of infringing goods. Infringement suits cannot be filed until the patent is granted. Failure to file an annual statement on commercial working of a patent in India could have adverse effects.

Designs

Designs protect new or original features of shape, configuration, pattern, ornament, or composition of lines or colours applied to articles by industrial process. This includes 2D and 3D forms and parts of articles capable of being sold separately.

To be eligible, a design must be novel and not previously disclosed or published.

Upon examination and registration, the design is protected for 10 years from the date of a pplication, extendable by another 5 years. Thus, the total term of protection is 15 years.

The registration process includes examination but no substantive objections as to originality except for objections which could be raised by third parties after registration by filing cancellation proceedings. Enforcement involves civil remedies similar to patents.

Trademarks

A trademark safeguards any graphically identifiable sign or symbol or non-conventional marks (such as sound marks, shape marks, 3D marks) that distinguishes the products or services of one person from another. Eligible marks include words, logos, device marks, 3D marks, colour combinations, packaging, and sound marks. Registration can be sought based on actual use or proposed use.

Examination is conducted by the Trade Marks Registry, and expedited processing is available. Opposition can be filed by third parties post-publication. Once registered, a trademark is valid for 10 years and can be renewed indefinitely for further 10-year terms. Rectification proceedings are available against erroneous registrations.

Infringement of registered marks can be addressed through civil and criminal proceedings, while unregistered marks are protected under common law through passing off actions. Well-known marks receive enhanced protection and can be formally recognised by the Trade Marks Registry. Indian courts recognise domain names as protectable under trademark law, and remedies are available against cyber-squatting or misuse of confusingly similar domain names.

Copyrights

Copyright protects original literary, dramatic, musical and artistic works, cinematographic films, and sound recordings. While registration is not mandatory, it is recommended for evidentiary value. To be eligible, the work must be original and expressed in a tangible medium. The term of protection is generally the lifetime of the author plus 60 years, with some variations for films and sound recordings.

Copyright comes into effect automatically upon creation and fixation. Enforcement mechanisms include both civil and criminal remedies, such as injunctions, damages, seizure of infringing goods, and penal sanctions. Amendments to the law have aligned India with international treaties, enhancing international enforceability.

Geographical Indications

Geographical Indications (GIs) safeguard the names or signs used on products that link their origin to specific regions, where certain qualities or reputation are attributable to that origin. Eligible goods include agricultural, natural and manufactured products. GI applications are examined and published for opposition before registration. The term of registration is 10 years from the date of application and can be renewed indefinitely in 10-year blocks. Enforcement is possible through both civil and criminal actions. Authorised users can also be registered and take independent legal action. Infringement includes unauthorized use of a registered GI or misleading use suggesting false origin.

Semiconductor Integrated Circuits Layout Designs

Layout designs of semiconductor chips receive protection once registered, provided they are original and not widely known among design professionals. Protection applies to the three-dimensional configuration of elements in an integrated circuit. The registration is valid for 10 years from the date of filing or first commercial exploitation, whichever is earlier. The layout must be original and created through intellectual effort. Enforcement is through civil remedies under the relevant legislation, and registration provides exclusive rights to reproduce or commercially exploit the layout design.

Plant Varieties

The Protection of Plant Varieties and Farmers' Rights Act offers breeders exclusive rights over

plant varieties that are novel, distinct, uniform, and stable. Registration confers exclusive rights to breeders for commercial exploitation. The duration of protection is 15 years for annual crops and 18 years for trees and vines. The application undergoes scrutiny and field trials. Infringement can attract both civil and criminal penalties, including fines and imprisonment. Farmers' rights are protected, and public interest exemptions are provided.

Trade Secrets

In India, trade secrets are safeguarded primarily through contractual obligations and common law principles, and there is no specific statutory protection. To qualify, information must be confidential in nature, disclosed under circumstances importing an obligation of confidence, and used in an unauthorised manner causing detriment. Enforcement relies on civil and criminal remedies, often through injunctions, damages, and offences of threat or criminal breach of trust. Employment contracts and non-disclosure agreements are the most common instruments of legal protection.

Startup India IPR Benefits & Fasttrack Process

Overview

The Government of India, through the Department for Promotion of Industry and Internal Trade (DPIIT), manages the Startups Intellectual Property Protection (SIPP) Scheme, which serves as the flagship program under the broader Startup India initiative to facilitate IP adoption, strengthen innovation, and support commercialization efforts.

The SIPP scheme was first launched in 2016, initially piloted for a one-year period until 31 March 2017. Based on its success, it was extended from 1 April 2017 to 31 March 2020, and then again until 31 March 2023. Most recently, in April 2023, the scheme was revised and extended for a further three-year term, currently effective from 1 April 2023 to 31 March 2026.

Key Features of the Scheme



Fast-Track Processing of Patent Applications

- Expedited examination of patent applications to help startups realise the commercial value of their innovations at the earliest.



Facilitators for IP Filing Support

- A panel of authorised facilitators (patent / trademark / design agents) provides end-to-end assistance in filing and prosecution of IP applications.
- Startups can choose from a government-empanelled list of facilitators.



Government-Borne Facilitation Costs

- The Central Government bears the full cost of the facilitators for any number of IP applications filed by a recognised startup.
- Startups only pay the statutory filing fees to the Indian IP Office, significantly lowering entry barriers.

Substantial Filing Fee Rebates

80%

rebate on patent filing fees vis-à-vis other entities

50%

rebate on trademark filing fees under the amended Trademark Rules, 2017

- Startups must be DPIIT-recognised to avail the benefits under the scheme.
- The scheme forms an integral part of the government's broader efforts to nurture innovation-led entrepreneurship in India.

Support for International Protection

Although implemented by Indian authorities, the scheme supports startups in pursuing IP protection both in India and globally, helping build globally competitive IP portfolios.

Access to Information and Support

Startups can visit the official portals of Startup India and IP India to access the scheme guidelines, list of facilitators, and contact details for support and clarification.

Technology Transfer & Licensing

Overview

Technology licensing across borders by Indian entities is governed by a combination of export control laws and foreign exchange regulations under the Foreign Exchange Management Act, 1999 (FEMA). These laws regulate not only the physical or digital transfer of technology and IP but also the associated foreign remittances, royalty payments, and compliance reporting.

The intersection of SCOMET-related export controls and FEMA-related payment regulations often creates complex compliance obligations, especially where sensitive technologies or high-value transactions are involved. This note outlines key legal, commercial and enforcement considerations for Indian promoters looking to structure inbound or outbound IP licences in a compliant and commercially efficient manner.

Key Takeaways for Indian Promoters

As an Indian promoter considering licensing or overseas transactions involving technology or goods, it is essential to navigate the dual layer compliance framework under

India's export control regime

FEMA / foreign exchange law

Export Controls and Technology Transfer

India maintains a Special Chemicals, Organisms, Materials, Equipment, and Technologies (SCOMET) list of dual-use items, sensitive technologies, chemicals and defence-related goods. Licensing agreements or cross-border transfers involving items on this list require export clearance from government

authorities. This includes software, technical data or collaborative R&D. Failure to obtain the correct export licence may result in regulatory violations, penalties, or disruption of supply chains.



FEMA Compliance and Capital/Current Account Rules

Under FEMA, any cross-border payment or receipt related to licences, royalties, or sale of IP/technology constitutes a current or capital account transaction. Certain payments may require pre-authorisation or be subject to RBI restrictions. For example, royalty payments exceeding prescribed thresholds may require specific approvals.



Intersection Risks in Cross-Border Licences

Entering into technology transfer arrangements with international partners necessitates adherence to both export licensing and foreign exchange compliance protocols. Even if payments are compliant with FEMA, transferring technology without checking SCOMET status may violate export laws.



Contractual and Strategic Considerations

- Embed export licence obligations in commercial contracts (e.g. conditions precedent).
- Insert representations and warranties on compliance with Indian export / FEMA laws from foreign parties.
- Include end-use restrictions and conduct due diligence on foreign counterparties to avoid indirect exports.
- **Account for regulatory delays**: Align timelines and build in contingencies in licence or M&A contracts.



Enforcement Consequences

Violations of export control laws may attract administrative or criminal sanctions. FEMA contraventions can result in fines, compounding orders, or ED proceedings. Both frameworks operate independently but frequently intersect in cross-border technology transactions.



Strategic Advice for Promoters

- Screen technologies for SCOMET classification prior to entering licensing / supply deals.
- Engage authorised dealer banks or finance professionals to handle foreign remittances and required filings (e.g. FLA, FC-GPR, ODI).
- Include compliance-triggered termination rights in contracts where export or FEMA permissions are pending.
- **Maintain strong documentation:** Licences, permits, filings, client and end-user declarations – to show due diligence.
- Consult proactively with export control and FEMA experts when structuring inbound or outbound IP / technology transactions.

6

FDI & Cross-Border Trade



FDI Policy for Startups

Foreign Direct Investment refers to 'investment through equity instruments by a person resident outside India in an unlisted Indian company; or in 10% or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.'

While, 'Indirect foreign investment' refers to when an Indian company receives investment from another Indian entity or investment vehicle that is itself controlled or owned by foreign investors. This happens when the investing Indian entity has foreign ownership or control, or if its fund manager or sponsor is foreign-owned or controlled. Even in such cases, the resident company receiving the investment must follow the same rules as if it were receiving direct foreign investment, including sectoral limits, pricing rules, and approval requirements.

Investors may also pool funds for investment in Indian entities in the form of 'alternative investment funds', which are regulated by the Securities and Exchange Board of India (the regulator of securities in India). Further, investments can also be routed through a special purpose vehicle set up in a suitable jurisdiction (externalization structures).

Further, FDI is a distinct form of receiving investments, compared to Foreign Portfolio Investment (FPI) and Foreign Venture Capital Investment (FVCI).

FPI involves overseas investors purchasing financial instruments such as stocks, bonds, or debentures of Indian companies, primarily through stock exchanges. In these investments, the investor holds less than 10% of the equity capital and does not participate in management or decision-making. FPIs are regulated by SEBI under the FPI Regulations, 2019, and must also comply with the NDI Rules 2019. Unlike FDI, which is long-term and strategic, FPI is considered short-term and speculative, focusing on market gains and liquidity akin to trading in domestic share markets.

Meanwhile, a FVCI is an investor registered with SEBI who is permitted to invest in unlisted Indian startups or venture-stage companies, especially in specific sectors like IT, biotech, or infrastructure. FVCIs can invest in equity or convertible instruments and enjoy certain regulatory exemptions, such as relaxed entry norms and pricing guidelines, under FEMA. This distinguishes them from traditional FDI, which generally requires adherence to broader sectoral caps and approval processes. FVCI funding is tailored for early-stage, high-growth companies, making it a specialized route for venture capital inflows from abroad for specific sectors, with a more robust compliance to follow as compare to FDI.

Sector-wise Caps & Automatic Routes

The FDI Policy provides that FDI can enter India through three primary routes depending on the sector of investment and the ownership percentage.

Automatic Route (No Prior Approval Required)

Under this route, foreign investors can invest directly into Indian companies without seeking prior approval from any government

authority. The RBI must still be informed of such investments, post-facto, through prescribed filings.

Some sectors which allow for investment under the automatic route include:

- Information Technology and IT-enabled Services (ITeS)
- Manufacturing
- E-commerce marketplaces (non-inventory based)
- Single-brand retail trading (up to 49%)
- Insurance intermediaries
- Renewable energy
- Infrastructure
- Pharmaceuticals (Greenfield)

Approval Route (Governmental Approval Required)

Foreign investors can invest beyond specified thresholds or in specific sectors only with prior approval from the Indian government.

Sectors under this route include:



- Multi-brand retail trading
- Print media (26% cap)
- Banking (private sector: above 49%)
- Defence (beyond 74%)
- Pharmaceuticals (Brownfield)
- Insurance (above 74%)
- Satellites (establishment and operation)

Restricted or Prohibited Sectors

FDI is either fully prohibited or highly restricted in some sensitive or strategic sectors. These restrictions are imposed on the grounds of national security, ethics, or public interest.

Examples include:



Note: Even in generally permissible sectors, any FDI from entities based in or owned by citizens of countries sharing land borders with India (e.g., China, Pakistan, Nepal, Bangladesh, etc.) requires mandatory government approval, as per DPIIT's Press Note 3 (2020).

For a comprehensive overview of sectoral caps on FDI, please see Annexure [I].

Key Takeaways

- Early-stage startups in SaaS, D2C brands, or climate-tech can usually access 100% FDI via the automatic route without any bureaucratic bottlenecks.
- Startups in sectors such as pharma, defence-tech, or telecom) should prepare for government approvals and allow additional time.
- If any foreign capital can be traced to countries which share a land border with India, approval from the government is mandatory, even for sectors where funding would otherwise be available under the automatic route.

Press Note 3 Evaluation

- Foreign direct investment in certain sectors may require compliance of additional conditions on operations.
- **If the investor:** (i) belongs / incorporated; or (ii) is beneficially owned by a citizen of or a person situated in, a country sharing a land border with India, the investor must obtain Indian Government's approval prior to the investment (whether primary or secondary).

Common Investment Structures & Terms

Investment Routes

Investments from foreign individuals or entities can be in the form of debt and/or equity. The principal routes for inbound foreign investment in equity or equity linked instruments issued by Indian companies are:

Foreign direct investment (FDI) route

Foreign portfolio investor (FPI) route

Foreign venture capital investor (FVCI) route

Principal routes for inbound investment in the form of debt are:

External Commercial Borrowing (ECB) route

Foreign portfolio investor (FPI) route



The key features of each route of investment are set out below:

Features	FDI	FPI	FVCI	AIF	ECB
Avenues & approvals	100% permitted in all sectors, except: - prohibited sectors - sensitive sectors (caps of foreign holding percentage) - Automatic or approval route	Portfolio/debt platforms; KYC based registration (~3 weeks); Voluntary retention route	10 specified sectors; SEBI registration (~12 weeks)	Liberal for IOCC; SEBI registration for 3rd party fund (Category I and II)	ECB Master Directions; Typically automatic route
Instrument permitted	Equity, compulsory convertibles, LLP capital (automatic route, no FDI-performance linked conditions)	Listed debt and /or equity ≤10% limit; Unlisted debt	FDI plus non /optionally convertible debentures / preference shares	Per category approved	FC / INR borrowing/ bond; non / partly / optionally convertible debentures / preference shares
Pricing norms	Floor and cap earmarked to FMV	No restrictions; Up to corporate debt limit	No restrictions	No restrictions	450 bps plus benchmark rate (excludes WHT); USD 750 million / FY
Exit norms	Freely transferable; 1-yr IPO lock-in	Debt - residual maturity ≥ 1 year	No restrictions; No IPO lock-in	No restrictions; No IPO lock-in	Maturity ≥3 years; ≥5 years for equity holder; ≥10 years for certain end-uses*
Return framework	Assured returns not allowed	No restrictions; 5% WHT interest cap	Flexibility of assured return and downside cover	None. Simpler tax given domestic residency	WHT on interest capped at 5%

***Relaxation of end-use restrictions:** End-use restrictions for ECBs have been relaxed. Earlier, only foreign equity holders were permitted to lend through ECB for working capital and general corporate purposes, which is now extended to all recognised lenders subject to certain conditions.*

Preferred Instruments

FDI is the most common route for investment in equity and equity linked instruments, which are more commonly opted for over debt instruments. These instruments primarily include:

- Equity shares
- Compulsorily convertible preference shares (CCPS)
- Compulsorily convertible debentures (CCDs)
- Share warrants

A newer, quasi-debt instrument is a 'convertible note' which is issued as a debt instrument by a startup, but can either be repaid (at the option of the investor) or converted into equity shares upon the occurrence of specific agreed conditions. It was formally recognized under the Companies (Acceptance of Deposit) Rules, 2014, following a 2016 amendment that exempted such instruments from being treated as deposits only for DPIIT-recognized startups.

In order to issue such convertible notes, a private limited must be recognized by DPIIT as a startup as per its notification GSR 127 (E). The amended 2016 Rules also provide two conditions for valid issuance:

- Minimum investment per investor per tranche must be at least INR 25 lakh
- Note must be either converted or repaid within 10 years of issuance

If these conditions are not met, the amount raised is treated as a deposit, triggering further regulatory compliance.

Foreign investors can also acquire Convertible Notes by transfer, so long as such transfer is in compliance with RBI's pricing guidelines.

The key rights offered by the above mentioned instruments are set out below:

Instrument	Ownership In The Company*	Voting Rights	Return From The Instrument	Priority Upon Liquidation
Equity Share**	Yes	Yes	Dividend from profits	IV
CCPS	Yes	No (except in certain situations)	Preferential dividend over equity shareholders possible	III
CCD	No	No	Interest	I
Convertible Note***	No, only upon conversion	No, only upon conversion	Interest until conversion and thereafter dividend from profits	II
Warrants ****	No, only upon conversion	No, only upon conversion	No	-

** CCPS and CCDs must compulsorily convert into equity shares at the end of a specified period, generally within 20 (twenty) years.*

*** Partly paid shares are also permitted.*

**** Convertible notes can be issued only by registered startups.*

***** Subject to payment of at least 25% consideration paid upfront with balance to be paid within 18 months.*

For private companies, contractual voting arrangements inter-se shareholders are also permissible.

Investments through the above-mentioned instruments must comply with pricing guidelines, pursuant to which, foreign investments must be made at a price equal to or above fair market value. All FDI must be reported to RBI post-facto.

Another manner of investment which has been permitted by Indian laws recently is share swaps. Pursuant to the amendment to the NDI Rules in 2024, swap of equity instruments of an Indian company and / or equity capital of a foreign entity against transfer of equity instruments of an Indian company between person resident in India and a person resident outside India is now permitted. Additionally, transfer of shares of an Indian company between a non-resident and a resident, against the swap of shares held in another Indian company is now permissible, subject to the applicable sectoral caps.

In January 2025, the RBI amended the Master Directions – Foreign Investments in India to permit companies owned and controlled by persons resident outside India (FOCCs) to undertake investments by way of swap of equity instruments for downstream investment (provided that the transaction does not circumvent other provisions of the NDI Rules in relation to downstream investment).

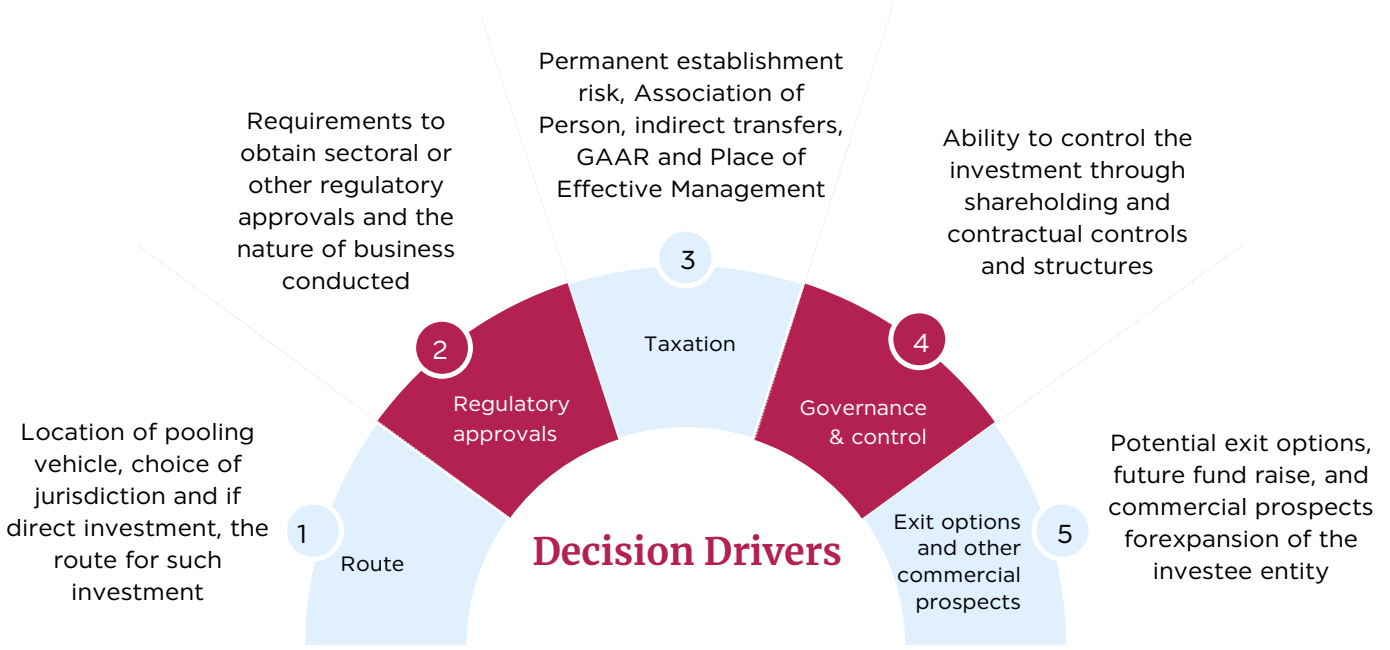
A person resident outside India may also undertake transactions with a person resident in India to defer, hold back, or place in escrow up to 25% of the total consideration for matters such as post-closing adjustments, earnouts, or specific indemnity items under the principal transaction documents. However, such deferment cannot exceed 18 months from the execution of the principal transaction documents.

It is important to note that any utilisation of such deferred consideration arrangements in relation to transfers must be explicitly provided for under the transaction documents related to foreign investments (whether direct or indirect).

Decision Drivers

Different Startups may benefit differently by different investment structures and instruments. In order to determine the right investment structure, a Startup may consider the following factors:

Decision Drivers for Determination of Investment Structure



FEMA and RBI Compliances

An Indian company issuing equity shares, CCPS or CCDs (Securities) to a non-resident is required to report the receipt of consideration within 30 (thirty) days by way of filing the Form FC-GPR with the RBI through an AD bank, detailing the issue of securities and receipt of consideration within 30 (thirty) days of their issue.

In case of sale or purchase of securities between India resident shareholders and non-residents, the resident shareholder is required to file the Form FC-TRS within 60 (sixty) days of the transfer of capital instruments or receipt/remittance of funds, whichever is earlier. The transfer of capital instruments shall be recorded by the company upon receipt of acknowledgment certificate (of filing of Form FC-TRS) from the AD Bank.

Every Indian company which has received FDI and/or made overseas direct investment abroad in the previous years is required to file an 'Annual Return on Foreign Liabilities and Assets' in Form FLA with the RBI on or before 15 July each year.

The following FAQ-style scenarios further illustrate when Forms FC-GPR and FC-TRS must be filed by the Indian company:

SCENARIO	FORM TO BE FILED
A startup issues equity shares or CCPS to a foreign investor	FC-GPR
A foreign VC is allotted CCDs as part of a Series A round	FC-GPR
An Indian founder sells shares to a foreign investor	FC-TRS
A foreign investor sells shares to an Indian resident as a part of its exit	FC-TRS
Convertible debentures held by a foreign investor are converted into equity	FC-GPR
Bonus shares are issued to foreign shareholders	FC-GPR
Rights issue made to both resident and non-resident shareholders	FC-GPR
Company received FDI during the previous financial year	FLA
No fresh FDI in current year, but FDI or ODI existed in previous year	FLA



A summary of some of the common filings required under the Exchange Control Regulations is provided in Annexure [II].

All filings must be made online, and require coordination with an Authorized Dealer (AD) Bank, i.e., a bank which is 'specifically authorized by the Reserve Bank under Section 10(1) of FEMA, 1999, to deal in foreign exchange or foreign securities'.

To streamline the reporting process for different types of foreign investments, the Reserve Bank of India (RBI) launched the Foreign Investment Reporting and Management System (FIRMS) portal.

The reporting process involves the following key steps:

i. **Entity Master Form Update:** This form captures essential details about the company and its foreign investment structure. It must be completed by an authorized representative of the company, known as the Entity User.

ii. **Business User Registration:** A Business User is a designated individual authorized to submit transaction-related filings on behalf of the company via the FIRMS portal.

iii. **Filing via Single Master Form (SMF):** The SMF is a consolidated reporting format that enables companies to file various forms related to foreign investments.

Press Note 3 Compliance

Further, as per Press Note 3 (2020), any investment from countries sharing land borders with India or where the 'beneficial owner' of the investment is from such a neighbouring country, the investment must be approved by the government and cannot be obtained via the automatic route. For instance, any investment by individuals or by entities incorporated in Bangladesh or Pakistan require prior governmental approval.

The onus of obtaining approvals and ensuring compliance with the applicable law lies on the Indian investee entity.

Moreover, individuals from Restricted Countries who wish to become directors or apply for a Director Identification Number (DIN) in India must first obtain security clearance from the government. Relevant consent forms and applications (such as Form DIR-2 and DIR-12) now also require disclosures related to national security clearance.

Non-compliance with FDI regulations under FEMA can result in penalties amounting to either INR 2,00,000 or up to three times the sum involved in the violation, whichever is greater. If the breach continues, an extra fine of INR 5,000 may be imposed for each day the default persists.

Export/Import Licenses & DGFT

The Directorate General of Foreign Trade (DGFT) is tasked with developing and enforcing India's Foreign Trade Policy, primarily aimed at boosting the country's export performance. The DGFT is accordingly in charge of the licensing regime surrounding export and import in India.

Importer-Exporter Code

Every exporter / importer, unless specifically exempted, is required to obtain a 10-character alpha-numeric Importer Exporter Code (IEC) from the DGFT for undertaking any export or import activities. It is required for all entities whether a firm, company, LLP, or sole proprietorship engaged in cross-border trade, unless specifically exempted. No export or import of goods is permitted without a valid IEC.

The IEC application must be submitted online, along with scanned copies of the following:

- A cancelled cheque bearing the entity's pre-printed name or a bank certificate in the prescribed format
- Address proof of the applicant entity as specified in the application

Once allotted, an IEC is valid for a lifetime unless suspended or cancelled by the competent authority. It is applicable across all branches, units, and divisions of the entity.

Regardless, IEC holders are required to electronically update their IEC details annually during the April–June period. Even if there are no changes, the same must be confirmed online. Failure to do so will lead to deactivation of the IEC, which can be reactivated upon successful updation.

SOFTEX

SOFTEX refers to a compliance mechanism under the Software Technology Parks of India (STPI) scheme, a government initiative to promote software exports from India. Companies engaged in IT/ITES exports through data communication links are required to submit SOFTEX Forms for certification.

Startups often overlook this requirement due to misconceptions that only STPI-registered units or SEZs need to report software exports. However, STPI has recently increased enforcement, and AD banks may now demand proof of SOFTEX filings for remittance tracking. Essentially, this requirement applies even to companies not availing of any tax benefits and simply exporting software or services from regular offices and even co-working spaces.

Every export of software (including SaaS, IT services, and digital platforms) must be reported via SOFTEX forms. This applies to all organisations providing their 'service' as a 'software' since the Foreign Exchange Management (Export of Goods & Services) Regulations 2015 broadly define 'software' as 'any computer programme, database, drawing, design, audio/ video signals, any information by whatever name called in or on any medium other than in or on any physical medium'.

The SOFTEX procedure is specifically applicable to entities exporting software or software-related services. Every software exporter must file the SOFTEX form within 30 days from the date of invoice or the last invoice raised in a given month.

The registration process involves a one-time registration fee and a turnover-linked annual fee, even for startups and small exporters. Failure to comply can lead to consequences such as penalties under FEMA, delays in foreign remittance realization, or regulatory red flags during due diligence or funding rounds.

To obtain the e-BRC (Electronic Bank Realisation Certificate), which confirms the receipt of payment for exports, exporters must apply through the DGFT website. The e-BRC is issued by the DGFT based on information from the authorized dealer bank.

Moreover, the DGFT also grants relevant certificates / permits for specific cases such as an validating an exporter for trading in products registered with specific entities authorised by the government or licenses for importing / exporting certain goods which are restricted under the Indian Trade Clarification based on Harmonized System Policy.

Customs & GST Considerations

Customs Duty – Transactions in Goods

In the context of cross-border trade, customs duties play a central role in determining the tax impact on tangible goods entering India. The accuracy in classifying the goods based on the HSN classification code is vital given the variable slabs of duty rates.

The components typically include Basic Customs Duty (BCD), a Social Welfare Surcharge levied on the BCD, and GST, which is calculated on the value including BCD and surcharge. IGST, unlike other duties, can be offset against future GST liability, making it a creditable tax for businesses. In some cases, additional trade remedies such as anti-dumping or safeguard duties may apply. On luxury goods duty rates are substantially higher. Concessional duty rates may apply under various Free Trade Agreements, like those with ASEAN nations, United Kingdom, etc.

Beyond standard customs duties, imports into India also need to comply with trade policy requirements outlined in the Foreign Trade Policy. While most goods can be imported freely, some may require pre-approvals, licenses, or adherence to domestic regulations like certifications. On the export side, generally, no customs duty is applied except for a few specific items.

Several beneficial schemes are available, stemming from the Customs Act as well as the Foreign Trade Policy:

- Duty deferment on imported goods under the Manufacturing and Other Operations in Warehouse Scheme
- Operating from an Export Oriented Unit
- Duty Exemption Schemes:
  - Advance Authorization scheme
  - Export Promotion Capital Goods scheme
- Duty Refund/Remission Schemes:
  - Duty Drawback
  - Remission of Duties and Taxes on Exported Products

These schemes come with strict approval processes and demanding export obligations (such as earning positive net foreign exchange). These are rigorously monitored, and any defaults can lead to penalties.

Further, India has established rules for determining appropriate value of imported and exported goods, with particular emphasis on transactions between related parties. Imports from related parties must be priced at an arm's length basis, requiring applications to the Special Valuation Branch to justify and validate the declared import price.

Cross Board Transactions for Services

Cross-border arrangements such as licensing of intellectual property or brand names, employee secondments, and R&D collaborations are common in global business structures. These transactions often pose significant challenges under India's indirect tax framework, particularly around service classification and place of supply rules. For example, while Indian subsidiaries may treat marketing or support services provided to foreign affiliates as exports, the classification of such services as 'intermediary' can deny export benefits. Ultimately, the taxability of these services hinges not just on their nature but also on where they are deemed to be consumed basis the prescribed provisions.

Export : Refunds Under GST

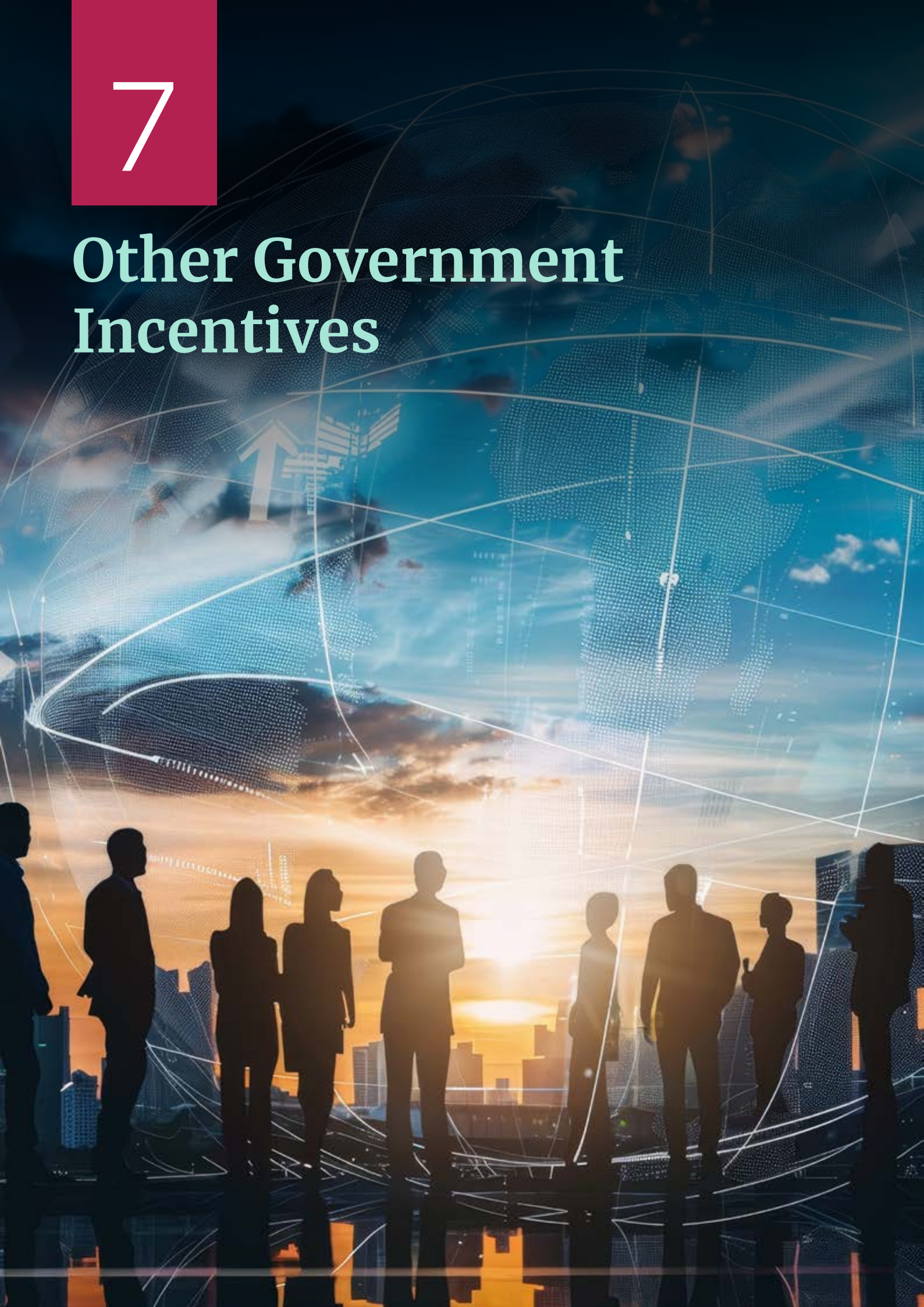
Under GST, exporters benefit significantly from zero-rated supply provisions. This means that exports of goods or services, or both, are subject to a 0% GST rate on the final product. Additionally, exporters can claim a refund of any GST paid on inputs used in producing these export supplies, ensuring full recovery of input tax credits.[12]



[12] *Section 16, Integrated Goods and Services Tax Rules, 2017 read with Section 54, Central Goods and Services Tax Rules, 2017*

7

Other Government Incentives



Startup India & State Startup Portals

What is Startup India?

Launched in 2016 by the Government of India, the Startup India initiative is a flagship mission to build a strong and inclusive startup ecosystem across the country. It focuses on promoting entrepreneurship, simplifying compliance, enabling funding, and fostering innovation across sectors, including technology, agriculture, healthcare, and manufacturing. These programs are managed by a dedicated Startup India team, which reports to The Department for Promotion of Industry and Internal Trade (DPIIT).

Startup Portals and Access Points

Several digital portals have been developed to assist startups in navigating the ecosystem efficiently. These platforms disseminate information, facilitate application submissions, compliance tracking, mentorship, and networking.

National-Level Startup Portals

- **Startup India Portal:** This is the national gateway for startups. Through this portal, startups can get themselves officially recognized, apply for seed funding, explore tax exemptions, and access templates for legal agreements and pitch decks. It also has a learning & development module and regularly updated dashboards showing trends across states and sectors.
- **Stand-Up Mitra Portal:** Especially designed to support women entrepreneurs and SC/ST founders, this portal facilitates collateral-free loans under the Stand-Up India scheme and links applicants to banks.
- **National Single Window System:** A one-stop portal for all business approvals across central ministries and several state governments. This is useful especially for startups entering regulated sectors (like manufacturing, food, defence-tech).
- **Match-making Portals for Startups:** AI-based matchmaking tools like Investor Connect Portal and MAARG Portal connect startups with a pool of angel investors, venture capitalists, and institutional backers based on their sector, stage and funding ask and with relevant mentors to provide guidance to through the lifecycle of the startup.
- **Seed Fund Portal:** This is the centralized application portal for the Startup India Seed Fund Scheme (SISFS), which enables early-stage founders looking for capital to develop a prototype or enter the market.
- **IndiaAI Startup Financing Portal:** Targeted specifically at AI startups, this portal provides access to funding opportunities, policy updates, and sandbox environments under India's national AI strategy. It is also a repository of eligible use-cases for government-backed support.
- **MeitY Startup Hub (MSH):** This hub brings together all tech-driven initiatives by the Ministry of Electronics & IT such as hardware incubators, accelerators, R&D labs, and sectoral Centres of Excellence. It is the main entry point for a startup in AI, Internet of Things, or electronics.

- **Chips to Startup (C2S):** This platform supports design-led manufacturing in semiconductors and electronics. Startups in fabless chip design, SoC development, and related technologies can apply for grants, training access, and support for IP creation and commercialisation.
- **Atal Innovation Mission (AIM):** A NITI Aayog initiative, AIM drives innovation through programs like Atal Incubation Centres (AICs), Atal Tinkering Labs (ATLs), and challenges for social innovation. It is ideal for startups seeking government support for grassroots or school-level innovation.
- **Bhaskar Bharat Startup Platform:** This is a startup ecosystem aggregation tool that connects stakeholders such as founders, mentors, investors, state policymakers, under one national network. It offers networking features, community tools, and discussion forums to encourage collaboration.

State-Level Startup Portals

Most Indian states have their own dedicated startup platforms. Some of the most active of these portals include states such as Maharashtra, Uttar Pradesh, Rajasthan, among others. These state portals are meant to offer localized support, like connecting a founder of a startup to regional incubators, helping with land allotments in industrial clusters, offering startup rankings, and facilitating state-specific incentives.

The digitisation of the startup ecosystem across the country in the form of these portals enables startups to fast-track their registration process and applications for recognition and seed funding, while providing assistance and support in the form of helpdesk numbers and follow-up assistance through incubators.

Mapping State-Wise Startup Policies

States in India are actively shaping their own startup ecosystems, designing policy tools that reflect their regional strengths, developmental priorities, and industry potential. While the types of support tend to fall into identifiable categories, the way states deliver that support varies widely. This section maps those categories and highlights notable state-level approaches.



Type of Support	Examples from States
Seed Funding & One-time Grants	Odisha, Tamil Nadu, and Assam offer seed funds ranging from INR 10L to INR 25L. Bihar even offers a Startup Fund Trust. Rajasthan ties grants to innovation challenges.
Monthly Allowance or Incubation Allowance	Most States in the country such as Himachal Pradesh, Puducherry, Tripura offer monthly allowances to founders during incubation; Kerala, Tamil Nadu, Meghalaya, Punjab, among others provide similar development - stage grants.
SGST Reimbursement to reduce tax burden.	Gujarat, Telangana, Haryana, and Odisha provide full or partial SGST reimbursements to recognized startups. Meghalaya stands out for extending this benefit over several years, promoting long-term stability.
Infrastructure Support such as land and office space	Tamil Nadu and Andhra Pradesh offer land in industrial parks; Telangana and Karnataka provide co-working and R&D spaces.
Intellectual Property Support and reimbursements	Nagaland, Tripura, Telangana, Himachal Pradesh and most other states reimburse patent expenses capped at certain amounts.
Market Access & Preference in Procurement	Rajasthan and West Bengal, among others provide procurement preference; UP and Gujarat support MSME-linkages

Special Segment Startups

Women-Led Startups

Women entrepreneurs with registered startup entities benefit from preferential access to capital, recognition-linked subsidies, and dedicated capacity-building frameworks.



National Level

The Stand Up India scheme enable loans between INR 10 lakh and INR 1 Crore. for women-led greenfield ventures. The PM Mudra Yojana allows DPIIT-recognised women-led startups to access collateral-free low interest loans. NITI Aayog's Women Entrepreneurship Platform (WEP) offers a consolidated portal for mentorship, scheme access, and community learning.



State Level

Maharashtra's Ahilyadevi Holkar Startup Scheme offers grants between INR 1–25 lakh for DPIIT-recognised women-led startups. Gujarat provides a INR 25,000 monthly sustenance allowance up to one year and enhanced seed funding ceilings for women founders. Jammu & Kashmir's Tejaswini Scheme includes interest-free loans, marketing support, and business training.

Karnataka's WEscalate programme offers reservation in acceleration and incubation programes for women. In Assam, Meghalaya, and Mizoram, the Swavalambini pilot initiative links young women in higher education institutions to entrepreneurship training and startup pathways.

The policy trend of the above schemes is toward layered incentives: women founders receive additional benefits under general startup policies, alongside stand-alone schemes offering fiscal support and resource access.

Social Impact & Rural Startups

Startups delivering measurable impact in underserved communities, particularly in rural infrastructure, public health, clean water, or agri-processing, are increasingly integrated into formal startup support systems.



National Level

- The Startup Village Entrepreneurship Programme (SVEP) under the Ministry of Rural Development offers a blend of seed funding, incubation, and digital enablement for rural startups integrated with Deendayal Antyodaya Yojana - National Rural Livelihoods Mission (DAY-NRLM) networks.
- The PRISM program under the Department of Scientific and Industrial Research supports the commercialisation of grassroots technologies with demonstrable community benefit.
- The Atal Innovation Mission's Community Innovation Centres (AIM-CICs) encourage startups addressing local problems in tribal and aspirational districts, offering access to FabLabs, mentorship, and early-stage grants.



State Level

- Maharashtra's Dr. Ambedkar Innovation Fund supports social impact startups led by SC/ST founders that provide measurable

outcomes in underserved communities. Jammu & Kashmir's Rise Together and SAHYTA schemes provide seed funding and collective incubation for youth-led startups targeting rural employment and service delivery.

- In Punjab, the startup policy integrates rural agribusinesses into state procurement and market linkage platforms, facilitating scale for ventures in food processing, agro-logistics, and allied services. In Telangana, startup platforms such as T-Hub support rural and social startups through incubation, procurement access, and CSR grants.

Green Startups (EV, Cleantech, Agritech)

India's green innovation agenda is powered by a mix of central missions and state-led accelerators. Startups focusing on electric mobility, clean energy, agri-tech, waste management, and bio-based materials benefit from both financial and regulatory incentives.

National Level

- The GENESIS programme under MeitY provides grant funding, sandbox testing, and mentorship for inclusive and green technology startups.
- TIDE 2.0 and NIDHI-PRAYAS fund prototypes in renewable energy, water tech, and agri-automation. BIG (Biotechnology Ignition Grant) and the BioE3 initiative support climate-resilient agri-biotech, clean fuels, and waste valorisation.
- The National Manufacturing Mission integrates startups into clean hardware production linked to PLI schemes.

State Level

- Tamil Nadu's TANSEED Green Accelerator nurtures EV and agri-innovation startups with access to dedicated incubators and funding rounds.
- Uttar Pradesh's Green Hydrogen Policy 2024 offers land, tariff waivers, and financial support to startups in hydrogen production and use-case innovation. Odisha and Karnataka promote clean energy and sustainable biotech startups through infrastructure, subsidies, and biotech incubators.
- Goa's Startup Policy reimburses cloud infrastructure and R&D expenses for cleantech ventures. West Bengal's EV Policy among others grants access to government land, R&D incentives, and concessional tariffs for clean mobility startups.



Defence-Tech and Strategic Innovation Startups

India's defence and strategic technology ecosystem actively welcomes private-sector innovation through structured pathways for funding, procurement, and R&D access.



National Level

- The Ministry of Defence's iDEX programme (under the Defence Innovation Organization) offers startups access to challenge-based procurement grants via the ADITI (Acing Development of Innovative Technologies) platforms. The Technology Development Fund (TDF) from DRDO funds prototype development for technologies in surveillance, robotics, sensors, and weapon systems. The Defence Testing Infrastructure Scheme (DTIS) by Invest India reduces entry barriers for hardware startups by enabling third-party certification labs. DRDO's Centres of Excellence in IITs and IISc give startups access to frontier R&D in aerospace, advanced materials, and autonomous systems.



State Level

- At the state level, Karnataka's Aerospace and Defence Policy provides fast-track clearances, tax exemptions, and access to dedicated aerospace parks. Tamil Nadu, through State Industries Promotion Corporation Of Tamil Nadu (SIPCOT) and strategic clusters, facilitates defence manufacturing and dual-use innovation.
- Through their respective Aerospace and Defence Policies, states like Maharashtra offer capital subsidies for setting up defence and aerospace production units, tooling, R&D centres, and testing labs. Odisha has developed defence-tech corridors with fiscal and plug-and-play support. Assam and Gujarat are emerging as defence innovation hubs, incentivizing drone surveillance, secure communication systems, and border-tech solutions

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Grievance Redressal & Legal Remedies



For the Indian startup ecosystem to thrive, effective grievance redressal channels and mechanisms are fundamental for prompt and efficient disposal of grievances. In this regard, the current Indian framework offers several options.

Startup Grievance Resolution Channels

The startup ecosystem offers multiple grievance resolution channels at the Central and State levels. Grievances with the 'National Portal for Indian Startup Ecosystem' can be raised online through the 'Startup India Investor Connect Portal'.

In addition to this, several states have specific grievance redressal mechanisms on their portals. For example, the 'Kerala Startup Mission', 'StartIn UP', 'StartUp Gujarat' are among a few with such mechanisms.

While not startup specific, Centralised Public Grievances Redress and Monitoring System (CPGRAMS) can also be used to raise grievances. This is a one-stop portal linked to all the Ministries / Departments of the Government of India and State.

A toll-free helpline number (1-800-115-565) has also been made available as part of the Ministry of Commerce's efforts to create a dedicated 'Startup India Desk'. It can be contacted to resolve any queries, problems or grievances that may arise, and it operates in regional languages as well.

How to Raise Issues with DPIIT / Startup India

All grievances that startups wish to raise with regard to the 'National Portal for Indian Startup Ecosystem' can be raised through the Startup India Investor Connect Portal. In the portal, a 'Customer Grievance Redressal Policy' can be found which delineates the process of grievance redressal as under:

Eligibility and Submission

Registered members of the platform can file grievances through an online form. Offline complaints and personal hearings are not accepted.

Acknowledgment and Redressal Process

An acknowledgement of receipt of the grievance is sent via SMS within 3 days of filing the grievance. The grievance is then forwarded to the concerned department. Grievances can be tracked using the service request number

Resolution and Escalation

The resolution is made within 45 days. If not settled within 45 days or if the user is not satisfied, it can be appealed to appellate@xyz.gov.in. This appeal, if accepted, will offer a resolution within 45 days.

Alternative Redressal

Users may also use the CPGRAMS on www.pgportal.gov.in for further redressal.

Note: There is a separate portal in place for startups who wish to submit grievances pertaining to public procurement. This is an online process and requires providing details such as the name of the procuring agency, the tender publishing date, the name of the procuring agency, the DIPP number of the startup concerned and the PAN number of the company among other things.

Dispute Resolution and Mediation Mechanisms

In any commercial ecosystem, disputes may arise from contractual relationships, intellectual property infringements or inter-personal conflicts. Effective resolution mechanism for such disputes becomes crucial in the current growth trajectory of startups in India.

While the traditional option of litigation offers value of precedents and tested structure, emphasis must be shifted to Alternative Dispute Resolution (ADR) for the flexibility, non-adversarial nature, affordability and efficiency that it provides.

In India, there exist four primary forms of ADR – Arbitration, Conciliation, Mediation and Settlement through Lok Adalats.

Their integration into Section 89 of the Civil Procedure Code, 1908 (CPC) as an essential pre-trial procedure shows the importance our legal system places on these processes, and justifiably so. Section 89 of the CPC empowers the court to encourage settlement of disputes outside the formal court process when it sees potential for resolution. The court may formulate or reformulate settlement terms and refer the matter to arbitration, conciliation, judicial settlement (including through Lok Adalat), or mediation, applying the relevant legal frameworks for each mode of resolution.

Startups & ADR

For startups, mediation, conciliation and arbitration offer considerable promise. Arbitration gives parties a great degree of control over the procedure to be employed in dispute resolution. Flexibility over the choice of venue and jurisdictional law to be applied, comparatively lower legal fees, speedy resolution and the freedom to appoint arbitrators with niche and specialised knowledge are significant benefits for fledgling enterprises that are emerging in increasingly diverse fields within our startup ecosystem.

Startups, especially in their early stages, often operate with limited financial resources. In this context, Mediation Act, 2023 (Mediation Act) offers an important alternative, providing startups with a formal yet flexible legal framework for resolving disputes outside court.

The Mediation Act, 2023 (Mediation Act), enacted to promote institutional mediation and formalise its process, introduces key advantages that align closely with the needs of startups:



Mandatory Pre-litigation Mediation

Before resorting to court, commercial parties must explore mediation, except in urgent cases. This helps startups avoid unnecessary litigation costs at the outset.

Time-bound Resolution

The Act mandates that mediation proceedings be completed within 120 days (extendable by 60 days), offering startups the benefit of quick resolution and the ability to stay focused on business growth.

Confidentiality & Informality

The Act protects the confidentiality of communications during mediation. This is essential for startups operating in competitive or IP-sensitive industries, and helps protect reputational interests.

Enforceability of Agreements

Mediated settlement agreements are now legally enforceable as if they were a court decree, giving legal certainty without the burdens of a formal trial.

Panel of Accredited Mediators

Startups can now access qualified, neutral mediators registered under the Act, which ensures professional conduct and domain-specific understanding (e.g., tech, finance, IP, etc.).

Cost Efficiency

Mediation, especially when done early, is significantly cheaper than arbitration or litigation – making it ideal for startups dealing with cash flow constraints.

That said, kindly note that some key provisions of the Mediation Act are yet to be notified.

Recognition of the Benefits of ADR & Unlocking its Potential

These benefits are not merely theoretical. The 'Micro, Small and Medium Enterprises Act, 2006' recognises these as well which is why, under Section 18, disputes related to delayed payments to enterprises under the Act are referred to the 'Micro and Small Enterprises Facilitation Council' for conciliation first, followed by arbitration if necessary.

Even for other cases, a clear agreement to mediation and/or arbitration is recommended. Typically, parties include the aforesaid agreement(s) in the 'dispute resolution' section of their contract. In the Indian context, for most cases, arbitration is a faster dispute resolution mechanism than litigation. It also brings more certainty and predictability. Parties can choose (and should clearly specify) the law governing the contract, law governing the arbitration agreement, seat of arbitration, venue of the arbitration, among others.

Parties may also agree that their arbitration be administered by an arbitration institution in accordance with its rules. These include the Mumbai Center for International Arbitration (MCIA), Singapore International Arbitration Centre (SIAC), International Chamber of Commerce (ICC) among others. Several arbitration institutions have mediation rules and capabilities to administer mediations. Overall, institutional ADR is generally faster, smoother, more systematic and professionally managed than non-institutional or 'ad-hoc' ADR. Notably, institutions bring administrative support, pool of experienced arbitrators (often including

specialists from non-legal fields), a faster and direct process (i.e. without the need to approach courts) for appointment of arbitrators. Some institutions also undertake a clerical scrutiny of arbitral awards before they are finalised, thereby reducing chances for error.

The integration of these processes into statutory frameworks shows that they are here to stay. The emergence of 'Online Dispute Resolution' platforms by private organisations (such as Sama and Presolv360') and state agencies displays a willingness for technology integration and adaptation to make these processes more cost-efficient, accessible and convenient. Focusing on greater integration of these mechanisms going forward would be beneficial and our startup ecosystem would be better for it.



9

Policy Advocacy & Future Reforms



Identifying Pain Points & Policy Feedback

Corporate

While the Indian startup ecosystem has been steadily growing and improving, it has also been confronted with several systemic challenges. If left unaddressed, these could act as a hindrance to the development of a vibrant startup ecosystem in our country. For instance, in 2023, a parliamentary standing committee highlighted some of these issues and challenges. They found these to be spanning across multiple fields with each requiring unique policy interventions. These are as follows:



Limited & Volatile Access to Funding

For Indian startups, access to funding depends on investment cycles which are highly volatile. This often leads to 'funding winters' and the deprivation of necessary capital.

> ***Recommendations:*** *Create a 'bridging fund' for when funding dries up. Also, conduct a DPIIT-led assessment to spot funding gaps and improve operations.*



Lack of Tracking Mechanisms

There is no government-backed mechanism to systematically track private investments. This has resulted in opaque financial reporting and potential non-compliance.

> ***Recommendations:*** *Develop an effective mechanism to track private investments by startups.*



Regulatory Complexity

There are over 42 different Ministries / Departments that administer startup schemes. This fragmented regulatory environment has resulted in coordination challenges and conflicting requirements.

> ***Recommendations:*** *Establish a single agency for the implementation of all startup schemes.*



Cumbersome DPIIT Registration

The extensive eligibility checklist for DPIIT recognition has made it difficult for new startup founders to navigate the registration process and access benefits under various schemes.



Taxation Burden

Tax incentives meant to support startups have seen limited uptake. For instance, due to the stringent criteria for tax exemptions under Section 80-IAC of the IT Act, only a few startups apply for this benefit and around 1% of these limited applicants actually receive certificates.

> ***Recommendations:*** *Relax the eligibility criteria for Section 80-IAC certificates, simplify Angel Tax rules and taxation of ESOPs only at the point of sale, among others.*



Market Access Challenges

Due to a lack of targeted guidance on the tender process, only about 10% of DPIIT-recognized startups have used

Government e-Marketplace (GeM). Further, international growth opportunities have been curtailed as mechanisms for direct foreign listings and reverse flip IPOs from IFSCs are still undefined.

> ***Recommendations:*** *Provide close guidance to startups on GeM procurement and facilitate listing of their products in Canteen Stores. Also, enable direct overseas listing and reverse flips via GIFT City IFSC Desks.*



Talent & Skill Gaps

There are talent gaps in the current startup ecosystem, particularly with regard to tech, R&D and related fields. Academic programs have weak linkages with industry and, as a result, the curricula has also failed to keep up with the changes in the startup ecosystem.

> ***Recommendations:*** *Offer more STEM courses, leverage programmes such as 'Return to India' to attract professionals and launch R&D collaboration grants with research institutes.*



Sectoral & Geographic Imbalance

A sharp sectoral imbalance is evident, with IT services holding sway and non-tech and social sectors being underrepresented. Additionally, several districts in Tier 2 and 3 cities are still underserved, with no infrastructure and mentorship outreach.

> ***Recommendations:*** *Focus on holistic development of non-tech and social sectors, run outreach programs in underperforming regions, and offer tailored tax breaks and subsidies.*



Low Women's Leadership Representation

Women are still underrepresented in leadership positions like those of a CEO or partner. This restricts gender diversity and involvement in decision making.

> ***Recommendations:*** *Collect disaggregated gender data, launch specific mentorship programs and incubators for women, and set VC funding targets for women-led startups.*



Low IPR Awareness

There is low awareness and use of intellectual property rights among founders. Of the patents that startups apply for, only around 11% end up in grants due to procedural issues and a lack of support. This does not bode well for long-term competitiveness.

> ***Recommendations:*** *Conduct workshop and seminar on IP Law, streamline the patent examination process and investigate reasons for low patent grant rates.*

Direct Tax

Currently, a startup that opts for the concessional tax rate of 25.17% is not eligible to claim tax holiday on business income. If the Startup intends to claim the tax holiday, it will have to be taxed under general provisions wherein it would still be liable to MAT at 17.47%. It is therefore expected that this exception is included under the concessional tax provisions.

Indirect Tax



Identifying Pain Points & Policy Feedback

Policy advocacy under the GST regime has been both complex and essential. Given the evolving nature of the law, taxpayers have faced numerous interpretational and procedural hurdles. While navigating this space has often been challenging due to the scale and speed of legislative change, it is equally true that the GST authorities have shown a commendable level of responsiveness. In several instances, policy clarifications, circulars, and even amendments have been issued in response to persistent stakeholder feedback, reflecting a willingness to address genuine business concerns. Thus, public policy advocacy under GST through individual representations or through industry associations, continues to play a strategic role in shaping a more pragmatic and business-aligned tax environment.



Authority for Advance Rulings

The Advance Ruling mechanism under the GST law was established as a proactive tool designed to offer clarity and certainty to taxpayers, especially in complex or ambiguous situations, by allowing them to seek authoritative decisions on specific issues before engaging in transactions. Taxpayers can apply for advance rulings to gain clarity on various matters, such as the classification of goods or services, the applicability of notifications, the determination of the time and value of supply, the admissibility of input tax credit, the determination of tax liability on proposed or undertaken activities, and the requirement for registration.

Although this framework is theoretically intended to minimize litigation and promote a more predictable tax environment, practical experiences have often deviated from this goal. In several instances, the rulings pronounced have been observed to be favouring the revenue's interpretation, which has, at times, raised concerns regarding the perceived impartiality of the forum. Consequently, this has reduced taxpayers' confidence in utilizing the advance ruling process as a dependable means to obtain unbiased.

Employment & Labour (ELB)



Future Reforms

India's labour and employment regulatory landscape continues to evolve, driven by a growing recognition of the need for simplification, inclusivity, and digital alignment. However, despite broad consensus on the need for reform, implementation challenges persist, underscoring the importance of staying abreast of legislative and regulatory developments. Set out below are some key areas of ongoing reform and emerging policy momentum.



Labour Codes Implementation

The four consolidated labour codes. namely, the Code on Wages, 2019; Code on Social Security, 2020; Industrial Relations Code, 2020; and Occupational Safety, Health and Working Conditions Code, 2020, together aim to streamline and modernise India's employment law framework. Although each code has received Presidential assent, formal implementation remains pending as both the Central and State Governments are yet to notify the final rules.

While most States and Union Territories have issued draft rules, the readiness and timelines vary significantly from state to state. Given the continued uncertainty and state-wise divergence in notification, implementation and readiness, employers must adopt a phased preparedness approach by closely tracking jurisdiction-specific developments and aligning internal policies and compliance mechanisms in advance of the eventual rollout, expected tentatively in FY 2025–26.



Regulation of Gig and Platform-Based Work

In parallel, several states have taken legislative steps to extend social security protections to gig and platform workers, in recognition of the growing informal and tech-enabled workforce. This aligns with the Code on Social Security, 2020, which acknowledges gig workers as a distinct beneficiary class.

- Rajasthan led with the enactment of the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023, India's first dedicated legislation for gig worker welfare.
- Karnataka followed with a draft bill in 2024 and subsequently promulgated an ordinance in 2025 to operationalise key welfare
  measures for the benefit.
- Jharkhand and Telangana have notified similar bills for discussions, reinforcing the growing legislative momentum. Further, Tamil Nadu has extended certain welfare benefits to gig workers under the extant Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act 1982, signalling a broader inclusion of platform workers under existing welfare regimes.

As these state-led frameworks take shape, employers operating gig or platform work models must remain vigilant of emerging obligations, particularly where operations span multiple jurisdictions with differing compliance mechanisms.

Role of Industry Associations

Industry associations have played a pivotal role in shaping GST policy by serving as a collective voice for businesses across sectors. These associations act as a bridge between taxpayers and the government, facilitating structured dialogue, highlighting practical challenges, and submitting consolidated representations on key interpretational and procedural issues. Their deep industry insight and data-backed inputs have often influenced policy amendments, clarificatory circulars, and compliance relaxations. By engaging proactively with GST Council members, central and state authorities, and technical committees, they ensure that the law evolves in a business-friendly and operationally feasible manner.

Annexure I

Broad Overview of Sectoral Caps

As on the date of publication of this handbook, the following sectoral caps have been prescribed under the FDI Policy 2020:

Sector / Activity	FDI CAP	Route	Indicative Conditions
IT & ITeS	100%	Automatic	-
Manufacturing (including contract)	100%	Automatic	An entity undertaking manufacturing activities is permitted to sell products manufactured in India through any retail / wholesale channels (including via e-commerce) without approval from the Indian Government.
E-commerce (marketplace model)	100%	Automatic	FDI is not permitted in inventory-based model of e-commerce.
Single-brand retail trading (SBRT)	100%	Automatic	The FDI Policy specifies that in case of SBRT, the products sold must be of a single brand only and they must be branded during manufacturing. While the FDI Policy does not provide a definition of SBRT, the terms imply that any such sale should be made to retail consumers only. Sourcing norms stated in the Policy apply for FDI >51% of the shareholding.
Multi-brand retail trading (MBRT)	51%	Approval	FDI in MBRT is highly regulated and certain conditions need to be fulfilled to undertake FDI in this sector.
Renewable Energy	100%	Automatic	-
Greenfield Pharmaceuticals	100%	Automatic	'Non-compete' clauses are not permitted except with prior government approval.
Brownfield Pharmaceuticals	100%	≤74% Automatic >74% Approval	Non-compete clauses not permitted except with prior government approval. Additional regulatory conditions apply to specified drugs.
Defence manufacturing	100%	≤74% Automatic >74% Approval	Subject to security clearance and scrutiny on grounds of national security.
Insurance	74% (soon to be increased to 100%)	Automatic	Also subject to approval from the Insurance Regulatory and Development Authority of India (IRDAI), compliance with the Insurance Act 1938 and its Rules.
Insurance Intermediaries	100%	Automatic	Includes brokers, TPAs and web aggregators and is subject to IRDAI verification.
Telecom	100%	≤49% Automatic; >49% Approval	The Policy provides that, 'FDI in Telecom sector is subject to observance of licensing and security conditions by licensee as well as investors as notified by the Department of Telecommunications (DoT) from time to time, except 'Other Service Providers', which are allowed 100% FDI on the automatic route.'

Print media (news & current affairs)	26%	Approval	Includes digital media. Also subject to Guidelines for Publication as issued by the Ministry of Information & Broadcasting from time to time.
Private sector banking	74%	≤49% Automatic; >49% up to 74% Approval	Subject to RBI licensing. At least 26% of the paid-up capital must be held by residents, except for a wholly-owned subsidiary of a foreign bank.
Satellites (establishment and operations)	100%	Approval	Subject to the sectoral guidelines of Department of Space / Indian Space Research Organisation.
Real Estate (trading) & Farmhouses	Prohibited	Not permitted	'Real estate business' shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.
Gambling, betting, lotteries, chit funds	Prohibited	Not permitted	Completely restricted.
Manufacturing cigars, cheroots, cigarillos and cigarettes	Prohibited	Not permitted	Completely restricted.
Atomic energy and railway operationS	Prohibited	Not permitted	Certain construction & maintenance activities allowed via public-private partnership.

Annexure II

Overview of RBI Filing Requirements

Form	Purpose	Responsibility	Timeline
Form FC-GPR	Report issuance of equity shares, CCPS, or CCDs to non-resident investors	Indian company issuing securities	Within 30 days of issue of securities
Form FC-TRS	Report transfer of securities between a resident and a non-resident (buy/sell)	Resident shareholder (buyer/seller)	Within 60 days of transfer or receipt/ remittance of funds, whichever is earlier
Form FLA	Annual return on foreign liabilities and assets	Indian company with FDI or ODI	On or before 15 July each year
LLP-I	Report receipt of capital contribution by a non-resident	Indian LLP receiving the investment	Within 30 days from receipt of the consideration amount
LLP-II	Report disinvestment or ownership transfer in LLP between resident and non-resident	Indian LLP receiving the investment	Within 60 days from receipt of the consideration amount
CN	Report issuance or transfer of Convertible Notes by Indian startups	Indian Startup issuing CNs	Within 30 days of issuance/transfer of CN
ESOP	Report grant of stock options to non-resident employees or advisors	Indian company issuing ESOPs	Within 30 days from date of issuance
DI	Report downstream investment by an Indian entity that has received foreign investment	Indian investee company	Within 30 days from allotment of shares

Annexure A

Glossary

Term	Meaning
Bonus Act	The Payment of Bonus Act 1965
CLRA	The Contract Labour (Regulation and Abolition) Act, 1970
Disabilities Act	The Right to Persons with Disabilities Act 2016
DPIIT	Department for Promotion of Industry and Internal Trade
EPF	The Employees' Provident Fund
EPF Act	The Employees' Provident Fund and Miscellaneous Provisions Act 1952
EPF Scheme	The Employees' Provident Fund Scheme 1952
EDLI Scheme	The Employees' Deposit-linked Insurance Scheme 1976
EPS Scheme	The Employees' Pension Scheme 1995
EPFO	The Employees' Provident Fund Organisation
ESI Act	The Employees' State Insurance Act 1948
ESIC	The Employees' State Insurance Corporation
Factories Act	The Factories Act 1948
FY	Financial year starting 1 April and ending on 31 March
INR	Indian Rupees, the lawful currency of the Republic of India
ID Act	The Industrial Disputes Act 1947
IC	Internal Committee constituted in accordance with the POSH Act
LWF Acts	State-specific Labour Welfare Fund Acts
MB Act	The Maternity Benefit Act 1961
MW Act	The Minimum Wages Act 1948
POSH Act	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013
PT Acts	State-specific Professional Tax Act
S&E Acts	State-specific Shops and Establishment Acts
Transgender Persons Act	The Transgender Persons (Protection of Rights) Act 2019

Sources

1. Khaitan & Co, Doing Business in India Report 2023.
2. Rule 2(h), FEMA (Non-debt Instruments) Rules, 2019.
3. FAQs_FDIPolicy.pdf
4. foreign-portfolio-investors-destination-india.pdf
5. Khaitan & Co, Doing Business in India Report 2023.
6. Re-check: FEMA Notification No. 20(R)/2017-RB and RBI Master Direction on Reporting under FEMA.
7. Rule 6 of FEMA (Non-debt Instruments) Rules, 2019; DPIIT FDI Policy Press Notes.
8. Press Note 2 of 2005 (PN.2/2005).
9. ECBs are governed by RBI's Master Direction on External Commercial Borrowings, Trade Credits and Structured Obligations. The ECBs under this framework can either be foreign currency denominated or Indian Rupee denominated. The primary benefit of the ECB route is that the lender under the ECB route does not require any registration in India however certain eligibility criteria has to be met by both the borrower and the lender.
10. A share warrant is a legal instrument that grants the holder the right to buy or sell a company's shares at a fixed price, either on a specified date or within a set period. They can offer financial advantage if the market price exceeds the exercise price and offer flexibility in negotiating the terms of their conversion into equity shares. While share warrants are not defined under the Companies Act, 2013, they are considered as 'securities' under the Securities Contracts (Regulation) Act, 1956.
11. Khaitan & Co, Doing Business in India Report 2023.
12. Reserve Bank of India
13. RBI Circular on Foreign Investment in India – Reporting in Single Master Form (RBI/2017-18/194), A.P (DIR Series Circular No.30); https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11297&Mode=0
14. Further details for using the FIRMS portal are available on RBI's FIRMS User Manual for Entity Users.
15. Chapter 2, Foreign Trade Policy
16. DGFT Handbook of Procedures- Chapter 2
17. IT Companies: Non-STP Registration for Software Export - Lexology
18. DGFT FAQ
19. Directorate General of Foreign Trade | Ministry of Commerce and Industry | Government of India
20. Directorate General of Foreign Trade | Ministry of Commerce and Industry | Government of India
21. Accessible here: Press Note No
22. As per paragraph 2.1.35 of the FDI Policy 2020, 'manufacture', with its grammatical variations, means a change in a non-living physical object or article or thing- (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.
23. The following conditions must be met in order to obtain governmental approval:
    - A minimum of US$ 100 million shall be invested by the foreign investor in the MBRT entity,
    - At least 50% of total FDI brought in the first tranche of US$ 100 million, shall be invested in 'back-end infrastructure' within three years,
    - At least 30% of the value of procurement of manufactured / processed products purchased shall be sourced from MSMEs, which have a total investment in plant & machinery not exceeding US$ 2 million,
    - Local state governments have a significant discretion in determining any additional conditions,
    - Companies with foreign investment engaged in multi-brand retail trading shall not be permitted to conduct retail trading through e-commerce in any form.
24. Please refer to paragraph 5.2.27 of the FDI Policy 2020.
25. DPIIT Press Note 2 (2021)
26. Press Release:Press Information Bureau
27. DPIIT Press Note 2 (2021)
28. Paragraph 5.2.14.1 of the FDI Policy 2020.
29. Paragraph 5.2.10.1 of the FDI Policy 2020.
30. Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019.



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