

STARTUPS

LEGAL GUIDE FOR STARTUPS

BY PRATIK JAIN

Editor's Aim

Converting great business ideas into Startups with a small amount of investment require skills and the ability as well as willingness to take risks. In today's world starting a new business or expanding an existing one requires you to enter into various transactions which involve risk, increase in liabilities and increase in responsibilities. Therefore mitigating this risk, minimising the liabilities and carefully negotiating the responsibilities is important. This Hand book aims at showing a pathway to do just that.

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EDITOR'S MESSAGE

Dear Friends,

Hope you are keeping safe. We are glad to present the inaugural edition of our Law Firm's Hand Book "Lex Guide" - Legal Guide for Startups - November 2020 edition.

In our inaugural edition, we are focusing on some of the pain points for early startups and small businesses.

This Hand Book aims to focus on the need for startups and small businesses to analyse their own business models, and acknowledge the importance of negotiating and customizing contracts based on the business models and needs. Lastly, throwing light on the importance of having the basic legal knowledge to run the business operations.

We hope the readers find this guide useful. We welcome all kind of suggestions, opinions, queries or comments from all our readers. You can write to us at adv.ncjain@gmail.com or at pratikjain95@gmail.com

Introduction

Successful startups are propelled by passionate entrepreneurs who focus on building exceptional products or services to deliver to their customers. Although it is very important to focus on customers and the market, it is equally important to have a good understanding about the basic laws, rules and regulations that are applicable for the smooth running of the business.

It is crucial that entrepreneurs are aware of the latest laws governing their business and market. This guide / hand book provides for some of the most important legal basics that startups and entrepreneurs in India should be aware of before getting on board:

Formulate your Business Structure

It is important to be clear about the type and nature of the business from the outset. An entrepreneur has to decide between specific business types viz. sole proprietorship, partnership, limited liability partnership (LLP), private limited company or a public limited company etc.

Each business type has its own set of merits and demerits, including but not limited to the set of legal requirements and regulations. Therefore, early startups should pay adequate amount of attention to them before starting their business.

Early startups should take into account the following legal implications of each of the business type: 1) Registration, 2) Legal Status, 3) Liability, 4) Taxation, 5) Members Required, 6) Transferability, 7) Filing compliances, 8) Annual meeting compliances, 9) Fund raising, 10) Foreign Partnership, etc.



Get a Co-Founder's Agreement

A Co-Founder's Agreement is an agreement that specifies and defines the important details of the founding members and the nature of the business, including but not limited to roles, responsibilities, compensation, liability, operations, management, exit as well as dispute resolution clauses.

Businesses require such a document to reduce the possibilities of disputes, disagreement and surprises when the business starts to operate. A Co-Founder's Agreement lays down a solid foundation for mutual benefit of its members and the business as a whole.



Get the required licenses and permits

The Licenses and Permits required depends on the nature, type and size of the business. Therefore, knowing the requisite licenses for ones business and working towards obtaining it is an important and integral step towards starting a legally compliant business.

Having the right licenses and permits for your business is crucial because the lack of it can lead to legal trouble and unwanted lawsuits.

Although the requisite licenses differ from one industry to the other. For example - a restaurant business will have to obtain a FSSAI (Food Safety License), an e-commerce business will have to obtain licenses under GST and Professional Tax. The most common license that is applicable to almost all businesses requiring a premises to carry on their business is to be obtained under the Shops and Establishment Act.



Know the Labour Codes

The Parliament in order to promote ease of doing business has simplified the voluminous labour laws into 4 codes, viz. 1) The Wage Code, 2) The Industrial Relations Code, 3) The Social Security Code, and 4) the Occupational Safety, Health and Working Conditions Code.

Although these labour codes have not yet been implemented. It is important for the owners of startups, small, medium and large businesses to be well versed with these codes.



Complying with the labour laws is crucial for an organisation. When an organisation hire people to work for them, they are subjected to labour laws regardless of the size of the business or the organisation.

Currently, the Startups registered under the Startup India Scheme can file a self declaration of compliance of nine labour laws within one year from the date of incorporation in order to be exempted from labour inspection.

Apart from that, it is important to have a well drafted employment policy, in order to retain great talent and avoid unwanted disputes.

Protect your Intellectual Property

Intellectual Property Rights (IPR) are the exclusive rights of the business to own and use its intangible and intellectual assets created over time.

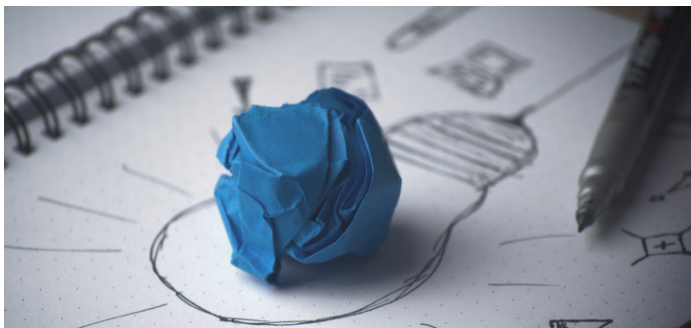
It is important for every startup to protect its IPR, whether it is the trade mark, logo, designs, brand name, website, patents, advertisements, etc. All these are valuable assets of a business. It is also important for startups to conduct a due diligence to ensure that they do not violate the IPR of any other person in order to avoid unwanted litigations and legal actions.

The Scope of IPR is very wide. However, startups should be aware of the following IPR Laws:

- Patents
- Trademarks
- Copyrights
- Industrial Designs
- Trade Secret

The startups in India can take advantage of the Scheme for Startups Intellectual Property Protection (SIPP) under the Startup India scheme.

The Scheme mentors the innovative and emerging technologies and help the startups to protect and commercialise their intellectual property.



Know your Taxes and Accounts

There are two types of taxes, direct and indirect taxes. Direct tax is the tax on income, whereas the indirect taxes are the taxes on sale of goods and provision of services.

Although the GST regime has reduced the number of indirect taxes, but still different businesses and sectors attract different taxes as well as different rate of taxes.

Under the Startup India Scheme, the Government has introduced certain exemptions for startups and new businesses, according to which the eligible startups can avail income tax exemptions for a period of 3 years.

When it comes to accounting, it is important for businesses to maintain proper books of accounts and conduct internal audits from time to time.

The startup owners need to ensure that all relevant taxation and accounting rules are complied with.

Moreover, it also important for startups to have a proper system for payments and invoicing and ensure timely raising of invoices and receipt of payments from their customers.



Negotiate and Customise your Contracts

It is important for Startups and Business to understand the importance of having personalized or customized agreements depending on the nature of their business and its requirements, rather than saving cost and having a standard template.

Moreover, startup entrepreneurs and business owner ought to have some basic knowledge of various aspects of contract and its management as the same can be a useful skill or tool for them to negotiate their contracts in way that mitigate or reduces the risk involved in a particular transaction.

To understand the aspects of contract, it is important for the entrepreneurs to know the basics of the Indian Contract Act, 1872.

A startup or a business enters into various types of contracts in its lifetime. Some of the most important contracts that a startup generally enters into are:



- Co-Founder's Agreement
- Memorandum of Understanding
- In case of an LLP – Partnership Deed
- Employment Agreements
- Consultancy Agreements
- Non Disclosure Agreements
- Master Service Agreements
- Collaboration Agreements
- Website Development Agreements

etc.

From the outset, a business has to enter into various contracts, each involving a different and unique transaction. Therefore, it becomes very important for Startup entrepreneurs and Business owners to have an effective contract management system in place.

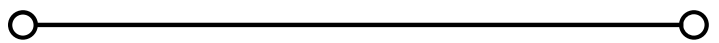
To Conclude

Complying with the legal requirements is vital for any startup, small business or a big business. It is important to have the knowledge of the applicable laws in order to ensure a smooth functioning of business operations.

It is a little impractical if not impossible for an individual to have the complete knowledge of everything that is discussed. This is why a successful business is not operated only by an individual, but involves a team effort more often than not.

For a business to excel it requires involvement of experts from different fields. Therefore, it would be safe to say, that nobody knows everything.

Which is why it is advisable for the startups and businesses to hire or consult a legal professional who will provide them with the requisite legal advice, negotiate, draft and review their contracts, ensure compliance of necessary laws and maintain the required legal records and documents in order to avoid unnecessary legal trouble and complications.



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Disclaimer

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