

# RESTAURANT OWNERS

## LEGAL GUIDE FOR RESTAURANT OWNERS

BY PRATIK JAIN

### Editor's Aim

When you think about starting a small business in India, one thing that comes to your mind more often than not is opening up a Restaurant. Every business has its own set of legal issues and same is true for a Restaurant Business. This edition of our Legal Hand-Book focuses on the legal compliances and licenses required by a Restaurant and also aims at providing solutions to some of the common legal issues faced by restaurant owners.

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## **EDITOR'S MESSAGE**

Dear Friends,

Hope you are keeping safe. We are glad to present the second edition of our Law Firm's Hand Book "Lex Guide" - Legal Guide for Restaurant Owners - December 2020 edition.

The Indian Restaurant Market is one of the fastest-growing in the world. It is expected to reach INR 5.99 lakh crore by 2022-23, as per the National Restaurant Association of India (NRAI) report.

This edition of our Legal Hand Book aims to enlighten restaurant owners regarding the legal licenses required to open a restaurant, knowledge of labour laws and consumer laws, the importance of written agreements with partners, suppliers, delivery service providers, etc., the importance of insurance cover. The Hand Book in this process will also aim to provide solutions to the common legal issues of restaurant owners.

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](mailto:adv.ncjain@gmail.com) or at [pratikjain95@gmail.com](mailto:pratikjain95@gmail.com)

# Introduction

Restaurant business is among the most lucrative ventures not only in India but across nations. Travelers and Vacationers are always looking for the best hotels and restaurants. Dining out has become part of the culture among families and friends.

Although it's a lucrative venture, setting up a new restaurant is definitely a overwhelming task. As a restaurant owner, you have to plan menus, look for investors, identify producers, collect supplies and manage your employees. However, it does not stop there, as a restaurant owner you not only have to obtain the requisite licenses but also have to address relevant legal concerns and issues.

This guide lists out some of the most important legal issues every restaurant owner faces and the ammunition to deal with them.

## Getting the Correct Licenses

During the process of opening up of restaurant and to run the restaurant smoothly, a restaurant owner has to pass through some legal procedures. There are certain specific licenses required to run a restaurant in India. We will discuss them one by one.

### 1. FSSAI License

The Food Safety and Standard Authority of India (FSSAI) provides a license cum approval for opening up a Restaurant in India pursuant to an application which can be filed online on the FSSAI website. A FSSAI license is essentially an assurance of the quality of food.

The documents required for obtaining a food license are: 1) duly filled form, b) identity proof, c) address proof, d) food safety management plan, e) proof of possession of premises, f) NOC from



Municipal Corporations or local bodies, g) Kitchen layout plan, h) Water testing report, i) list of food category, j) types of equipment to be used, k) medical certificates of employees.

Although it looks a tedious task, but the hassles of acquiring various licenses have been drastically reduced now. Now you can get a food license online by submitting all the required documents and pay the fee online as well.

### 2. Health / Trade license from the Municipal Corporation

The Health / Trade License came into being from the concern that public health must be given prime importance. This license ensures that your restaurant stands corrected under the health concerns of the Health Department. This license is issued by the local civil authorities like the State's Municipal Corporation or the Health Department.

The documents required for obtaining a health / trade license are: 1) proof of possession of premises, 2) three copies of site plan and layout, 3) Indemnity Bond for INR 100, 4) Structural Stability Certificate signed by Structural Engineer, 5) Electricity and Power Bills, 6) Sewer connection proof, 7) Water testing reports, 8) Medical certificates of employees, 9) Lal Dora Certificate, if applicable.

A restaurant owner can apply for Health/Trade License online. The application forms are available at the State's Municipal Corporation website. It is pertinent to note that Municipal Corporations hold the power to shut down restaurants which do not have this license.

### 3. Eating House License

Eating House means a place where people can sit, eat and drink in a restaurant. This license is given by the License Police Commissioner of that specific place or the city.

The documents required for obtaining this license are: 1) identity proof, 2) residence proof, 3) proof of possession, 4) NOC from owner of premises, 5) trade license, 6) FSSAI license, 7) Fire safety certificate, 8) list of employees, 9) site plan, 10) police clearance certificate, 11) proof of surveillance system, 12) photographs of the place.

The Eating House License is issued by the Police authority of the state where you wish to open your eating house.

### 4. Liquor License

In case you wish to serve liquor in your restaurant, then obtaining a liquor license is must. This license is issued by the Local Excise Commissioner and the application form for this license is available on the respective State Government website.

The documents required for obtaining liquor license are: 1) documentary proof of the legal status of the restaurant, 2) proof of possession of premises, 3) trade license, 4) certificate of completion of restaurant, 5) Eating House License, 6) NOC from state fire department

### 5. Shop and Establishment License

It is important to register a restaurant under the Shops and Establishment Act within 30 days from the commencement of the business.

The documents required to obtain Shop and Establishment License are: 1) PAN card of the owner, 2) Identity proof, 3) Address proof, 4) details of the employees.

The above documents are to be submitted with an application form in which you need to mention the name of the restaurant, its postal address, and proof of possession to the Local Chief Inspector. After verification of all the documents, a registration certificate will be issued which would be required to be displayed at your restaurant.

### 6. GST Registration

It is mandatory for a restaurant business having an annual turnover greater than INR 20 Lakhs to register for GST. To obtain GST registration, a restaurant owner will have to complete the GST registration application in Form GST REG-01 which can be done online.

The details and documents required for GST registration are: 1) valid mobile number, 2) valid email address, 3) bank account number, 4) bank IFSC.

A provisional ID called GSTIN and password will be issued by the Government Authorities. Upon filling the requisite information and submitting the required documents an Acknowledgment Number will be generated and upon verification of all details you will be issued a GST Registration Certificate.

### 7. Fire Safety License

A restaurant at all times should thrive for the comfort and safety of its customers. Therefore, a restaurant is obligated and required to obtain a fire safety license to ensure the safety of its customers.

A Fire Safety License is nothing but a No Objection Certificate (NOC) from the State Fire Department.



A restaurant can file an application for the NOC online on the state government website pursuant to which the Chief Fire Officer shall inspect the site and the premises and grant the NOC accordingly.

## 7. Other Licenses

Apart from the ones discussed above, a restaurant owner shall also obtain a 1) Lift license, 2) Music license, 3) Environmental License, 4) Signage License, all depending on the nature and size of the restaurant and its location.

It is recommended that a restaurant owner consults with a lawyer in order to obtain the necessary licenses depending on the nature and size of the restaurant.

## Hiring the Right People for the Right Job

Hiring the right people and retaining them is a challenge that almost all restaurant owners face. Generally, a restaurant requires 3 types of employees:

- 1) **Kitchen Staff** - includes cooks, support staff, etc.
- 2) **Service Staff** - includes waiters, housekeeping staff, etc.
- 3) **Management Staff** - includes managers, chef, cashier, store manager, etc.



Naturally, a restaurant owner must look for legal services regarding labour laws in order to gain knowledge related to working hours, minimum wage, overtime and should ensure compliance of labour laws at all times, as non-compliance may lead to unnecessary legal troubles.

Since hiring the right personnel is such a crucial issue for a restaurant owner it is important and at the same time recommended that a restaurant owner enters into a contract with the employees in order to document the rights and obligations of both the employee and the employer in order to achieve a smooth functioning of the restaurant and in order to avoid any dispute between the parties.

A restaurant owner should seek help of a lawyer, while entering into a contract with his or her employees, or to ensure compliance of the labour and employment laws.

## Contracting with Suppliers and Vendors



A Restaurant not only needs a supplier or vendor for raw materials such as fresh fruits and vegetables, dairy products, snacks, beverages, etc. but also requires a supplier for furniture, crockery, stationery, electronics, machines, etc. from time to time.

A cordial relationship with the suppliers or the vendors is significant for a smooth functioning of a restaurant. It is recommended that a restaurant has at least two-three like for like substitutes for procuring raw materials.

Where to buy goods, and on what conditions is an important decision for a restaurant owner. Therefore, a well drafted contract is highly recommended with the suppliers and vendors.

It is really important for a restaurant to have a written agreement over the payment terms, price, quality, delivery schedule, packaging, transporting, liability in case of problems in the supplies, indemnity, dispute resolution and exit procedures with the vendor or supplier.

A restaurant owner should consider getting proper legal advice when noting down the standard terms and conditions of the arrangement with the vendors or suppliers. A contract should be such, that protects the restaurants' interests and shifts the legal responsibility of any shortcoming in a product to the vendor or the supplier.

## Contracting with the Landlord

Choosing a right location and space for your restaurant is essential for its success. You generally have two options, either to buy a space for your restaurant or to lease a space. While owning a space is beneficial, it's not always possible nor it is recommended for a new restaurant to make such an investment. Therefore, leasing a restaurant space becomes one of the most practical alternative.

There are different types of leases based on the costs covered by the lessor i.e. the landlord and the cost covered by the lessee i.e. the restaurant owner in our case.



Therefore, once you have taken the decision to lease a space for your restaurant you should negotiate a contract with the landlord taking the help of your lawyer.

Commercial landlords ordinarily don't provide the kind of services that residential landlords provide. Commercial leases normally lack consumer protections. Therefore, it is important to negotiate with the landlord keeping in mind the following factors:

**1) Duration of the lease** - It is advisable to enter into a short-term lease if you plan to relocate or expand in the near future otherwise one should go for a long term lease as landlords usually give better deals if you lock in for a longer duration.

**2) Clause for annual raise** - If your contract entails a clause for annual raise in the rent, ensure that there is a cap on the amount that can be raised by the landlord every year. As later on it may lead to unwanted disputes.

**3) Alterations and Repair** - It is important to have an understanding as to who will be responsible for alterations or repair of the subject property.

It is recommended that a restaurant owner consults with a lawyer before negotiating a commercial lease agreement with a landlord.

## Negotiating Food Delivery Contracts

Food delivery specially in the COVID era becomes an essential service for a restaurant. Today, there are many third party online platforms / applications through which a restaurant can deliver its food to the customers.

These platforms provide a standard form of contract to partner with restaurants. However, it is important for a restaurant owner to negotiate the terms when entering into a contract.

While negotiating a contract with the food delivery service provider, a restaurant owner should consider the following clauses: 1) price and commission, 2) delivery area, 3) control over the menu and prices, 4) method or mode of delivery, 5) use of trademarks and logos, 6) advertising offers, 7) exclusive partnership, and 8) allocation of liability.



More often than not a third party food delivery platform will try to convince restaurant owners to work exclusively with their platform. Well this may work well for a restaurant which has many chains and wants to keep a similar standard of delivery. However, for restaurants trying to reach out to more and more customers, they will want to partner with other food delivery platforms as well.

A restaurant owner should also ensure a proper and fair allocation of liability between the restaurant and the delivery platform. For instance, a restaurant should not be responsible for faults of a delivery personnel.

It is recommended that a restaurant owner consults with a lawyer before entering into a contract with a third party delivery service platform.

## Getting the Right Insurance Cover

A restaurant owner has a duty of care to customers, employees, and other visitors. It is therefore important to have an insurance plan that covers associated risks.

Following is the list of insurances that a restaurant owner should consider:

**1) General Liability Insurance-** It covers injury to any person or property on the premises of your restaurant, or caused by a restaurant employee in the course of work.

**2) Property Insurance-** It covers damage to the property such as the furniture, inventory, cabinets, computers, displays and other fittings and fixtures.

**3) Product Liability Insurance-** It covers a restaurant for any legal action or medical issues caused by the food sold at the restaurant.

**4) Workers' Compensation-** It covers your employees' medical and other costs in case of an injury to their body or property during work.

**5) Equipment Insurance-** It covers theft, damage and repair costs of large equipment used in a restaurant such as refrigerators, ovens, chimneys, mixers, grinders, etc.



**6) Spoilage Insurance-** It covers loss due to food spoils which may happen due to various reasons.

**7) Business Interruption Insurance-** It covers your obligation of monthly payments in case you are forced to suspend work for reasons listed in the policy.

**8) Liquor Liability Insurance-** It covers the restaurant from any law suit filed against it in cases where a customer injures themselves or others after having too much alcohol at your restaurant.

**9) Other Insurances-** There are other insurances such as: a) disaster insurance, b) theft insurance, c) cyber liability insurance, etc.

Cost of getting the right insurance or combinations of insurances will depend on the nature of events, losses and acts covered in the policy. The more the cover, higher is cost of the premium.

It is recommended that a restaurant owner consults with a lawyer before purchasing an insurance cover for their restaurant business.

## To Conclude

Building a restaurant business from scratch is a difficult task. As mentioned earlier, a restaurant owner, has to plan menus, look for investors, identify producers, collect supplies, and manage employees.

They generally don't have enough time nor the expertise to look into the legal compliances as well as issues involved in taking up all the above tasks.

Complying with the legal requirements is vital for any restaurant owner. 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 restaurant business is not operated only by an individual, but involves a team effort more often than not.

It is advisable for restaurant owners to 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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