

START-UPS AND THEIR REGISTRATION

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ABSTRACT

This paper traces the concept of start-ups and their registration. In present times everyone desires that their business should run at success, grow or expand from time to time and earn maximum profits. But it is not possible to achieve all the aforesaid things if the business is of a routine model or with prevailing ideas in the market or if multiple people are in the same business (competitors). To achieve the aforesaid things and attract customers the business organization must have to understand the needs and demands of the customers even if the business organization can recognize the needs and demands of the customers and try to achieve the satisfaction of the customers by routine model and methodology of business, they may not achieve it. Therefore if entrepreneurs are coming with innovative production, service, process, or platform and establish a new business called a startup or start-up the probability of emerging, a fast-growing business will be able to achieve the unmet needs of the customers.

Keywords: Startup, entrepreneurs, innovation, customers.

INTRODUCTION

“A startup is a newly established business that can come in all forms and sizes”. The vital difference between startups and other forms of businesses is that startups offer new innovative products or services. A startup is an entrepreneurial venture formed to meet the needs of customers through innovative products and services. Broadly speaking startups have a high rate of failures, but those startups which gain success with their innovative ideas will be well-settled in the market as well as in the minds of the customers. “Startup as defined vide notification no. G.S.R.127 (E), dated 19th February 2019 by DPIIT as;

An entity shall be considered a Startup:

Up to ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm

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(registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.

Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded one hundred crore rupees. An entity is working towards innovation, development, or improvement of products or processes, or services, or if it is a scalable business model with a high potential of employment generation or wealth creation. Provided that an entity formed by splitting up or reconstruction of an existing business shall not be considered a ‘Start-up’.”¹

RESEARCH METHODOLOGY

The research methodology is doctrinal. The primary focus is on comprehending the laws, statutes, and concepts related to start-ups and their registration.

OBJECTIVES

To study the concept of start-up and the procedure for its registration.

EVOLUTION OF START-UPS

Start-ups can come in all forms and sizes. It is a difficult task in the initial stages for building trust in partners, getting funds, maintaining continuity and consistency, facing difficulties, and many other elements while building the product or service. Generally, a start-up will begin its product or service with a “minimum viable product (MVP)”, which helps to collect information from real customers by releasing the products with exact features of the future product in a smaller number of quantities, which reduces the cost and time to release into the market and also saves the organization from huge loss if the product or service is unable to attract the customers. In addition to it, start-up founders will collect data from the initial customers to know the drawbacks of the ideas, technologies, or business concepts. Usually, Founders will enter into an agreement that deals with the contributions, management, decision-making authority, roles, responsibilities, etc. Business models for start-ups can be either bottom-up or top-down approaches.

¹ ICSI, Setting up of business entities and closure, SBEC, 219, (2023), https://www.icsi.edu/media/webmodules/26112021_Setting_up_of_Busines_Entities_& Closure.pdf.

For a start-up, it is difficult to attract investors and raise funds for the products and services but if the idea is innovative and has scope there are sources from which the founders can raise the funds for example in my university (ICFAI) if the ideas of the students are innovative and have scope then the university will provide the necessary funds to them likewise there are many other sources which may invest on start-ups. It is important to remember if the start-up is not falling within the definition of a start-up, then it ceases to be a start-up and if the start-up is inviting subscriptions or raising funds from the public, or participating in mergers and acquisitions then it will not be a start-up

BENEFITS TO START-UPS

Simple process: The process of establishing the start-up is an online process. Whoever has an innovative idea and is willing to establish a start-up shall fill out an online form through the website.

Reduction: “Start-ups will enjoy an 80% reduction in the cost of filing patents”. The government will also provide facilitators of patents and trademarks who will do the work. The start-ups only need to pay the statutory charges but not the facilitator's charges which will be bear by the government.

Easy access to funds: A 10,000 crore fund is set up by the government to provide funds to start-ups². In the initial stages, it will be difficult for the start-ups to attract investors but the government started encouraging the investors by giving guarantees.

Quick and easy compliance: Generally incorporating any company or complying with any legal matters takes a lot of time but the government simplified various compliances which saves time and money for start-ups.

Easy exit: All the start-ups will not remain in the market forever due to many reasons. Start-ups that have failed can easily exist in the market. The process of closing up the start-up will only take 90 days for winding up.

² ICSI, , Setting up of business entities and closure, SBEC, 215, (2023), https://www.icsi.edu/media/webmodules/26112021_Setting_up_of_Busines_Entities_& Closure.pdf

Research facilities: Government will establish research parks that will benefit the entrepreneurs for their research and development work.

Start-up fests: Every year 2 start-up fests will be held annually which benefit the founders of the start-ups to meet and build their network.

TAX EXEMPTIONS TO START-UPS

- As per section 80IAC of the income tax act 1961 if a start-up is recognized by the DPIIT is eligible to apply to the Inter-ministerial board for a deduction of an amount equal to 100% of the profits and gains derived from the business for 3 consecutive years out of 10 years. Condition to avail of this exemption is that date of incorporation shall be on or after 1st April 2016 and the annual turnover should be less than 100cr.³
- If start-ups fail to make any profits for the first years it is exempted to pay MAT @18.5%.
- People investing their capital gains in the venture funds set up by the government will get exemptions under tax law. The capital gain should be invested within 6 months from the date of the transfer of assets. The maximum amount that can be invested in the long-term specified assets is Rs.50 lakh. The amount shall remain invested for 3 years otherwise exemption will be revoked.⁴
- If an individual or HUF sells residential property and invests or subscribes equity shares of 50% or more on eligible start-ups then tax on LTCG will be exempted if the lock-in period of investment is for 5 years.

COMPANY LAW EXEMPTIONS TO START-UPS

- Cash flow statements are not necessary to be included in the financial statements of a start-up.
- Up to 10 years from the date of incorporation Start-ups can issue sweat equity shares to their employees but it shall not exceed 50% of their paid-up capital.
- For start-ups, convening board meetings once in a first 6 months of a calendar year and the second time in the next 6 months of the calendar is sufficient to fulfill the

³ ICSI, , Setting up of business entities and closure, SBEC, 219, (2023),https://www.icsi.edu/media/webmodules/26112021_Setting_up_of_Busines_Entities_& Closure.pdf

⁴ Income Tax Act,1961, §54EE, Acts of Parliament,1961(India).

requirements under company law and a minimum of 90 days gap between two meetings.

- The annual returns of start-ups should be signed by the company secretary or director of the company if there is no company secretary.
- Start-ups are permitted to issue further share capital to promoters or directors working as employees.
- If the start-up is received an amount of Rs.25 lakhs or more in a single transaction from a single individual on a convertible note or the amount shall be repaid by the start-up within 5 years then such amount received by the start-up is not a deposit. Section 73 of the Companies Act 2013 will not apply to start-ups for the first five years of their incorporation.

VITAL POINTS FOR A START-UP

Structure: Selecting an important structure for a start-up is a difficult task it is because while choosing the structure of the start-up founders must consider many factors like the amount of capital introduced, tax considerations, cost of formation, administration, nature of business, ownership, management, administration, profit sharing, etc.

Registrations and business licenses: Start-ups are required and mandated by law for registrations when duly required for example every entity shall have PAN and GSTIN for tax. Business licenses allow start-ups to run their business smoothly and lawfully within their territorial jurisdiction it will be issued by the appropriate authority.

Intellectual property rights: The main difference between start-ups and other business entities is innovation which is why intellectual property rights play a crucial role for start-ups. Developing and protecting their innovative ideas with the registration of intellectual rights helps the start-up gain a competitive advantage.

Equity split among the founders: Equity among the founders should be split based on the roles, capital introduced, amount of effort, and time contributed to their start-ups. Without pre-discussing the splitting of funds if they distribute equally it may lead to disappointment, and discourage the founders who gave comparatively more in all the aspects from other founders.

Founder agreements: Founders' agreement plays a key role for start-ups it is because the founder's agreement proves the meeting of minds and mutual understanding among the

founders. It establishes a clear relationship among the founders. In every founder's agreement, it should clearly state the roles and responsibilities, remuneration payable, decision-making process, management control, operating structure, and all other vital issues related to the start-ups.

Employment contracts: Start-ups must make sure that they are entering into an employment contract with their employees. Employee contracts will certainly provide the roles and responsibilities of the employees, job descriptions, and compensation. Employee contracts will not allow the employees to disclose the secrets of the start-up it will prevent their employees from joining the competitor's business or establishing a business in competition with the start-up. It also prevents employees who have worked during the product or service development from claiming intellectual rights.

Agreements: Before setting foot into a third-party agreement, they should enter into a non-disclosure agreement with the third party so that it prevents the third party from claiming Invention or creation rights.

Employee stock option pool (ESOP): ESOPs are incentives given to employees and directors which help to retain and motivate them. It creates ownership among the employees by giving shares at a discounted price on certain conditions.

PROCESS OF RECOGNITION OF START-UP

The process of recognition of an eligible start-up shall be as under:⁵

- The process of recognition shall start with an online application through the mobile app/portal of DPIIT.
- The following documents shall be accompanied while applying.
 - a) Certificate of incorporation or registration.
 - b) Information regarding the nature of the business, innovation, product, and service development or improvement process.
- DPIIT may after authenticating the documents submitted as it may deem fit,

⁵ ICSI, Setting up business entities and closure, SBEC, 217&218, (2023), https://www.icsi.edu/media/webmodules/26112021_Setting_up_of_Busines_Entities_& Closure.pdf.

- a) May accept the application and recognize the eligible entity as a start-up.
- b) May reject the application and not recognize the eligible entity as a start-up.

PROCEDURE FOR SETUP START-UP

Incorporation of the business: First, the founders shall incorporate the business in any of the three forms a) Private company b) Limited Liability Partnership c) Partnership.

Note: Incorporation shall be done by following regular procedures.

Registering business with Start-up: Founders of the start-up shall fill out an online form with requisite details and documents at <http://www.startupindia.gov.in> website. The entire process for registering as a start-up is online.

Documents to be uploaded: Following documents shall be accompanied while applying.

- Certificate of incorporation or registration.
- Information regarding the nature of the business, innovation, product, and service development or improvement process.

Registration for tax benefits: Start-ups are provided with various tax benefits but to make use of those they need to register with the Inter-Ministerial Board.

Self-Certification: Self-certification of the following details

- Certification of incorporation or registration as a partnership, limited liability partnership, or private company.
- Incorporated or registered before 10 years.
- Turnover shall be less than 10cr.
- Not participated in splitting up or reconstruction of the business.

Certificate of Recognition: Founders are all set to apply for recognition and on applying along with the documents required if deemed fit them will be issued a certificate of recognition.

CONCLUSION

It is true to say that not all start-ups will stay in the market forever but those start-ups which are well-settled in the market as well as in the minds of people will create history. Start-ups are

entrepreneurial venture which aims to solve the needs of the people through their innovations. The vital difference between start-ups and other business is that start-ups come with innovative products or services. In the author's point of view in the development of the country start-ups play a crucial role by innovating the latest products or services, generating employment, etc. Every start-up which is eligible under the law shall register to avail of benefits provided by the government.



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