

## THE SIGNIFICANCE OF LEGAL ADVICE FOR START-UP FIRMS

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**Aayushi Jog\***

### INTRODUCTION

A company in the initial stages of its operations is known as a start-up. It is generally founded by one or more entrepreneurs who believe that products or services are in high demand and develop the same. These companies generally look for capital from a variety of sources, for example, venture capitalists as they have high costs and limited revenue. Adhering to legal advice and complying with legal procedures can help the firm mitigate risks. It ensures they have the requisite license for the setting up of the firm and binding contracts with everyone the Start-up deals with inclusive of its founders and employees. From the initial stage, ensuring intellectual protection is of utmost importance.

Appointing a legal counsel is crucial for start-up firms as they have them help navigate through getting requisite licenses or permits, make the firm compliant with the relevant laws, ensure the contracts are performed as per the agreements by the parties and thus, relying on the legal counsel ensures the firm, protection from legal liabilities.

A start-up may face a range of legal issues such as a breach of the agreement between founders which may lead to lawsuits, infighting, dilution of rights and etc and non-compliance with laws, tax implications, failure to protect intellectual property rights, etc. The list of legal services a start-up needs consists of the Formation of an entity, Compliance with the relevant laws of the firm, procuring the requisite licenses and permits, Registration of the firm with Start-up India, Drafting of Contracts between founders, VCs, employees, vendors, service providers, etc., Compliances related to Employment and GST Registration.

The following is the list of ways legal advice is needed for start-up firms:

### LEGAL STRUCTURE

Determining an applicable legal structure of the firm is undoubtedly the most important decision for a start-up. The decision should be based on the following factors such as nature or sector of enterprise operation, enterprise trajectory, tax and regulatory issues, amount of

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\* SECOND YEAR, LLB, GLC, MUMBAI.

formation and the current administration, exterior capital requirement and type of funding sought, safety required for the extent of authorized legal responsibility, variety of stakeholders, a requirement of steadiness between possession and administration and proposed mechanism for revenue sharing or distribution amongst stakeholders and others. Selecting an applicable legal structure is without doubt one of the most important selections for any start-up. Restricted legal responsibility partnerships and personal restricted firms are practiced by the popular entity constructions for start-ups in India.

### **START-UP REGISTRATION LICENSE**

The start-up's firm needs to apply for licenses for the functioning of the firm with the regulated law compliances. The Licenses are vital for the firm and require necessary registrations mandated by law for the running of the business.

The nonavailability of relevant licenses may lead to costly and unwanted lawsuits. Start-up registration is the official process of listing a business with an official registrar meanwhile Licences are a form of legal documents that allow a business to operate.

The licenses required for start-ups are different for companies vary to vary depending on the factors such as the number of employees, location of the firm, and type of enterprise possession. Enterprise licenses such as Meals security licenses, Wellbeing or commercial licenses, Outlets & Institution licenses, etc are permits issued by the government authority for the operation of work by start-ups.

### **INTELLECTUAL PROPERTY SECURITY**

As generally start-ups are built on innovation and invention, thus it is very important to protect an entrepreneur's intellectual property to prohibit others from plagiarism and earning profits from the entrepreneur's business. India has several laws which deal with Intellectual Property such as the Copyright Act, of 1957, The Parents Act, of 1970, The Trade and merchandise marks act, of 1958, and the Designs Act of 1911, that prevent the unauthorized use of the intellectual property.

To protect intellectual property, innovations, and ideas, the entrepreneur should be legally advised the same. The lawyers can help in saving the entrepreneur in various legal battles and complicated lawsuits regarding plagiarism and ownership of intellectual property etc.

Legal Advisory is suggested even before selecting a brand logo or name so that there is no controversy regarding the plagiarism involved.

## **LABOUR LAWS**

A company whether big or small, hires people as employees in its organization, thus making the company apply for the labor laws of the country regardless of the size of the organization.

The companies need to avail legal advice to assess the laws applicable to the start-up firm and check whether it is compliant with the regulated laws of the same. The firm needs to adhere to labor laws and comply with laws related to gratuity, minimum wages, PF payment, maternity benefits, weekly holidays, payment of bonuses, etc.

Start-up businesses registered under the Start-up India initiative can within one year from the date of incorporation complete a self-declaration in order and get an exemption from labor inspection.

The applicable Labour Laws for the said scheme are:

1. The Industrial Disputes Act, of 1947
2. The Trade Unit Act, of 1926
3. Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996
4. The Industrial Employment (Standing Orders) Act, 1946
5. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
6. The Payment of Gratuity Act, 1972
7. The Contract Labour (Regulation and Abolition) Act, 1970
8. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
9. The Employees' State Insurance Act, 1948.

To continue the scheme for the second and third years the Start-up business will have to file a self-certified return. Start-up hires consultants or free time apart from full-time employees. To cover policies of all types of employment, legal aid is required. Having a good and well-designed employee policy compliant with labor laws boosts productivity and boost the morale of employees.

## **CONTRACTS**

All the agreements of the start-up firm are formed in compliance with the Indian Contract Act, of 1872, and they are referred to as contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration with a lawful object, and are not expressly declared to be void.

Contracts are a vital part of operating a start-up business. It is required for the smooth functioning of tasks and is a great mechanism to ensure recourse in case of non-fulfillment of work. Having knowledge about the aspects of contract management may prove beneficial to the entrepreneur.

Contract Management ensures the smooth operations of the function. From Employee contracts to third-party agreements, it is a crucial aspect of the business. It is needed to outline and formalize employee contracts with respect to salary, scope, and stock options (if any). A contract is recommended with partners who may be even part of your trusted circle of friends or family for easy functioning and reduction of future risks. Signing up a contract with staff and vendors may prove to be effective and beneficial for the functioning of a start-up.

Start-up often requires the need to interact with potential investors employees to customers which lead to an exchange of ideas, it may be important for the growth of the business, but it may expose the risks of infringement and theft of ideas and other proprietary business information. An Idea shared in goodwill may be used maliciously.

To prevent such incidents, NDA or Non-Disclosure Agreement needs to be drafted and used by the business whilst sharing an idea or discussing critical information regarding a start-up with a third party.

## WINDING DOWN THE START-UP FIRM

Winding down of the Start-up firm is referred as to the process of shutting down or closing down the company. When the process of winding down is initiated in the firm, all the stakeholders from vendors to employees to customers and investors are required to inform in advance and the whole process must be properly executed in order to make it easy for stakeholders to exit the business.

From a legal standpoint, there are basically three ways to shut down a start-up:

- Fast Track Exit Mode
- Court or Tribunal Route
- Voluntary Closure

## CONCLUSION

A Legal Counsel for a Start-up ensures the safety and protection of the business from unwanted legal issues and theft of ideas, innovation, and intellectual property. It helps the business to navigate through the complicated procedure for starting up a business, attaining licenses that are compliant with relevant laws to winding down the start-up which will ensure the ease of exit from the business. The legal system is of utmost importance regarding Intellectual Property Rights as most often, start-ups are based on innovation and invention. It is always recommended for start-ups to hire legal counsel and thus, legal advice is significant for start-up firms.

### References

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