

## BUILDING A STRONG LEGAL FOUNDATION: THE ESSENTIAL LEGAL WORKS FOR BUSINESSES

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### ABSTRACT

*This article analyzes the basic and essential Legal works for a business. In today's business layout, it is very important than ever for companies to establish a strong legal foundation. This study talks about business formation and registration, contracts, and agreements, Intellectual Property Protection, Employment law, compliance and regulatory matters, taxation, and dispute resolution. Business formation and registration involve an overview of business formation types (Sole Proprietorship, Person Company, Partnership, Limited Liability Partnership, Private Limited Company, Public Limited Company, and Section 8 Company) and the significance of obtaining the necessary licenses and permits. Contracts and Agreements involve the importance of having written contracts and agreements with different kinds of agreements like Non-Disclosure Agreements, Employment Agreements, Partnership Agreements, etc. Intellectual Property Protection involves the overview of different types of intellectual property (Patents, trademarks, copyrights, and trade secrets). Employment Law involves the overview of employment laws and regulations. Taxation involves the overview of tax laws and regulations for businesses and different types of taxes like Income Tax, Goods and Services Tax, etc. Dispute Resolution involves litigation, mediation, negotiation, and arbitration. Therefore, to ensure compliance with laws and regulations, mitigate legal works, and protect business interests, businesses must seek legal counsel.*

**Keyword** – Business, Legal Work, Compliance, Dispute.

### INTRODUCTION

According to the Ministry of Corporate Affairs (MCA), the number of companies incorporated registered during Financial Year 2021-22 was more than 1.67 lakhs while during Financial Year 2020-21, 1.55 lakhs companies were registered.<sup>1</sup> Due to the growth in the registration of businesses, employment has also increased a lot as per the Factsheet of MSME (Udyam)

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<sup>1</sup>MCA registers highest ever 1.67 lakh companies in FY 2021-22 (PIB Delhi, 18 April 2022)  
<<http://www.pib.gov.in/PressReleasePage.aspx?PRID=1817773>>

Registration Including Udyam Assist Platform (UAP), total employment only in MSME is 10,83,46,231 till 20 March 2023.<sup>2</sup> The evolution of businesses take place from a barter system to a currency system there is so much longer and more complex process driven by technology, changes in Social and economic structures, and the development of laws and regulations to govern business activities the law plays a very important role in shaping the business landscape and ensuring that business operates fairly and transparently. It encompasses a wide range of activities from drafting contracts and agreements to managing litigation and Regulatory Compliance. It's important for businesses to know well about the role of legal work in their operations and to work closely with legal professionals to ensure and manage risk effectively. Let's read about the legal Works essential for a business. Seven legal pillars for a successful business.

## **BUSINESS FORMATION AND REGISTRATION**



**SOLE PROPRIETORSHIP:** A sole proprietorship is one of the simplest and oldest forms of business organization. It is a type of business formation in which there is only one owner who operates the business. It is easy and inexpensive to set up and maintain as the owner is the decision maker and enjoyer of all the profits of a business. But the owner is also personally liable for all liabilities and debts of a business. if a business goes bankrupt the owner's assets may be jeopardized.

## **METHODS TO REGISTER**

**UNDER THE SHOP AND ESTABLISHMENT ACT, 1948:** The shop and establishment Act is relevant to all commercial establishments with Business centers, offices, warehouses, stores, hotels, eateries, amusement parks, theaters, Etc nationwide. If any individual's business qualified to be said as a shop definition under the shop and establishment act the application for business registration should be forwarded to the local Municipal Corporation of the concerned city.

**UDYOG AADHAAR UNDER THE MINISTRY OF MSME:** MSME stands for micro, small, and medium Enterprises. It is an important sector for the Indian economy which includes micro (turnover not exceeding 5 crores), small (turnover between 5 crores to 75 crores), and medium (turnover between 75 crores to 250 crores) businesses. According to the MSME act,

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<sup>2</sup> Factsheet of MSME (Udyam) Registration Including Udyam Assist Platform (UAP) (20 March 2023)  
<<https://udyamregistration.gov.in/Government-India/Ministry-MSME-registration.htm>>

2006 the classification of Enterprises is defined in section 7 where the investment in plant and Machinery does not exceed 10 crore Rupees, and in the case of providing or rendering the services, the investment does not exceed 5 crore rupees.<sup>3</sup> The Gazette of India notifies about the update in the MSME act, 2006 of section 7 which quantifies the investment in plant and Machinery or equipment does not exceed 50 crore rupees and turnover does not exceed 250 crores.<sup>4</sup> The Ministry of MSME has set up the Udyog aadhar portal<sup>5</sup> for online filing of Udyog Aadhar Memorandum (UAM) by businesses located anywhere in the country.

**GST REGISTRATION:** The old Value Added Tax (VAT), Service Tax, Purchase Tax, local body taxes, etc get replaced by GST. GST registration can be chosen if a business turnover is more than 20 lakhs.<sup>6</sup> There are so many benefits of GST registration like easy compliance, uniformity of tax rate and structures, improved competitiveness, and gain to manufacturers and exporters. Sole proprietorship requires business licenses for different kinds of businesses other than shop and establishment licenses.

- A food business operator license is required for food handling business
- Custom broker license required to act as a custom broker
- Security Agency license required to provide security services

## ONE PERSON COMPANY

One Person Company (OPC) is a form of business that allows a single person to own and operate the business. It is introduced under the Companies Act, 2013, to boost entrepreneurship and ease of doing business.<sup>7</sup> It is different from sole proprietorship as in an OPC the owner has limited liability which means if the business losses or incurs debt then their personal assets are not at risk.

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<sup>3</sup> *THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006*  
<<https://legislative.gov.in/sites/default/files/A2006-27.pdf>>

<sup>4</sup> *The Gazette of India* (New Delhi, 1 June 2020)  
<[https://msme.gov.in/sites/default/files/MSME\\_gazette\\_of\\_india.pdf](https://msme.gov.in/sites/default/files/MSME_gazette_of_india.pdf)>

<sup>5</sup> Udyog Aadhar Portal  
<<https://udyamregistration.gov.in/Government-India/Ministry-MSME-registration.htm>>

<sup>6</sup> As per *Section 22(1) of CGST Act, 2017* (30 September 2020)  
<<https://cbic-gst.gov.in/pdf/CGST-Act-Updated-30092020.pdf>>

<sup>7</sup> As per *Section 3(1)(c) and Section 2 (62), The Companies Act, 2013*  
<<https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>>

## LEGAL FORMALITIES AND REQUIREMENTS IN OPC

- OPC must have a minimum of one director and one shareholder, who can be the same person. The director must be your citizen and resident of India.
- A nominee is a must who will take over the business, in case the owner becomes incapacitated or dies.
- It must be a unique name for an OPC and must not be identical to any other company or trademark.
- OPC must have a registered office in India. There is no minimum Capital requirement however the owner must invest a minimum of 1 lakh rupees in a business.
- Memorandum of Association (MoA), Articles of Association (AoA), and other necessary documents with the Registrar of Companies (ROC) in a particular state must be filed.
- An OPC must comply with all the necessary legal and tax requirements.

**PARTNERSHIP FIRM:** A partnership is a type of business in which two or more individuals or entities generally known as co-owners join together to achieve the same goal, to manage and operate a business and share its profit. All Partners share profits and liabilities equally. A partnership is defined under the Partnership Act, of 1932.<sup>8</sup> It is done by signing a partnership deed by partners.

## LEGAL FORMALITIES AND REQUIREMENTS IN PARTNERSHIP FIRM

- The application for registration of partnership, Form No. 1.<sup>9</sup>
- Identity and address proof of Partners.
- Ownership is proof of the principal place where business is conducted.

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<sup>8</sup> As per *Section 4, The Partnership Act, 1932*

<[https://www.mca.gov.in/Ministry/actsbills/pdf/Partnership\\_Act\\_1932.pdf](https://www.mca.gov.in/Ministry/actsbills/pdf/Partnership_Act_1932.pdf)>

<sup>9</sup>Form No. 1, *The Partnership Act, 1932*

<[https://registrationact.in/Pdf/Firm\\_Registration\\_Form.pdf](https://registrationact.in/Pdf/Firm_Registration_Form.pdf)>

- The partnership deed (certified true copy).<sup>10</sup>
- Correctly filled a specimen of an affidavit.

**LIMITED LIABILITY PARTNERSHIP:** Limited liability partnership is a type of business form in which two or more Partners work together in a business entity but the liability of the shareholders is limited to shareholding in LLP. Thus, if there is a loss in LLP shareholders/ Partners will not suffer the loss, they will only share profits. LLP is defined under LLP Act, 2008.<sup>11</sup>

### LEGAL FORMALITIES AND REQUIREMENTS IN LLP

- In the formation of LLP at least two partners must sign a partnership agreement and file the necessary documents for registration.<sup>12</sup>
- The name must be unique and must also include the words "LLP" or "Limited Liability Partnership".
- Registered office, designated members (at least two) Taxes (according to the share of the member's profit), and compliance (relevant laws and regulations) are the requirements for LLP. There is only one filing per year in LLP.

**PRIVATE LIMITED COMPANY:** A Private Limited Company is a form of business that is privately held by a limited number of shareholders. Private Limited Company is a good choice for small and medium-sized businesses, reason behind it that the protection of shareholders' assets and the flexibility in management and ownership. It is governed by the Companies Act, 2013.<sup>13</sup>

### LEGAL FORMALITIES AND REQUIREMENTS IN PLC

- The company must be incorporated and registered and must have a registered office in India.

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<sup>10</sup> Department process for registration of firms (indexed by google in December 2017)  
<[http://uprfsc.gov.in/PDF\\_files/Process\\_Flow\\_for\\_Firms\\_and\\_society.pdf](http://uprfsc.gov.in/PDF_files/Process_Flow_for_Firms_and_society.pdf)>

<sup>11</sup> As per Section 3, LLP Act, 2008  
<[A2009-06.pdf \(legislative.gov.in\)](http://legislative.gov.in/A2009-06.pdf)>

<sup>12</sup> As per Section 11 and Section 12, LLP Act, 2008

<sup>13</sup> As per Section 2 (68), The Companies Act, 2013  
<<http://mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>>

- At least one director and one shareholder are a must. The director complies with all legal requirements.
- Article of Association (AoA) is a document that set out the rules for how the company will run the powers and duties of directors and how shares will be issued and transferred.<sup>14</sup>
- Annual General Meeting (AGM) is the meeting where they discuss the performance of the company each year with shareholders.<sup>15</sup>
- A company must register for corporation tax and file an annual return with HMRC.
- Companies must protect their customer and employees' data and must comply with data protection laws including the General data protection regulation (GDPR).<sup>16</sup>

**PUBLIC LIMITED COMPANY:** A Public Limited Company is a type of business form that is owned by shareholders and offers its shares to the public domain through listing on the stock exchange. It is also referred to as a publicly traded company. A Public Limited Company is defined under the Companies Act, 2013.<sup>17</sup> In India, there are two Stock Exchange i.e., the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE).

#### **LEGAL FORMALITIES AND REQUIREMENTS IN PUBLIC LIMITED COMPANY**

- The company must be incorporated and registered with the company's house.
- At least two directors and two shareholders are a must.
- Articles of Association (AoA), Annual General Meeting (AGM), accounts, and annual returns compliance are the same as Private Limited Companies.
- A minimum share capital of rupees 5 lakhs is required.

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<sup>14</sup> As per Section 2 (5), *The Companies Act, 2013*

<sup>15</sup> As per Section 551, *The Companies Act, 2013*

<sup>16</sup> Article 5-11, *GDPR (General Data Protection Regulation)*

<[Art. 5 GDPR – Principles relating to processing of personal data - General Data Protection Regulation \(GDPR\) \(gdpr-info.eu\)](https://gdpr-info.eu)>

<sup>17</sup> As per Section 2 (71), *The Companies Act, 2013*

**SECTION 8 COMPANY:** Section 8 company<sup>18</sup> is a form of a company generally known as an NPO (Non-Profit Organization) which promotes Arts, Commerce, education, charity, protection of the environment, Sports, Science, research, social welfare, religion, and aim to use its profit (if any) or other income to boost these objectives.

### **LEGAL FORMALITIES AND REQUIREMENTS IN SECTION 8 COMPANY**

- Incorporation with Registrar of Companies and name must end with words "Foundation", "Association", "Society", "Council", "charity" or "Institute".
- It is stated the objective of promoting charitable, social, or philanthropic causes. NPO must not distribute any profits among its members and shareholders.
- A company must have a minimum of two directors and one should have Indian residency and citizenship.<sup>19</sup>
- The company must comply with all applicable laws and regulations including those related to tax and other regulatory requirements.

### **CONTRACTS AND AGREEMENTS**

Offer and acceptance between two or more parties are said to be an agreement. An agreement enforceable by law is a contract.<sup>20</sup> An agreement may or may not be legally enforceable as it can be a simple or informal understanding between parties. While the contract will always enforceable by law as an agreement has a legal obligation instead of a social obligation.<sup>21</sup> In a business or organization, a contract is a basic task which present in a business at every step from business formation to dispute resolution. Written Agreements or contracts are more easily enforceable than oral agreements.

General business contracts include Partnership Agreements, Indemnity agreements (to compensate for damages), Non-Disclosure Agreement (to not disclose confidential information), Franchise Agreement, Advertising Agency Agreement, Settlement Agreement (concession), Joint Venture Agreement, Licensing Agreements, Promissory Note (repayment

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<sup>18</sup> As per *Section 8 (1), The Companies Act, 2013*

<sup>19</sup> As per *Section 8 (3), The Companies Act, 2013*

<sup>20</sup> As per *Section 2 (h), Indian Contract Act, 1872*  
<<https://legislative.gov.in/sites/default/files/A1872-09.pdf>>

<sup>21</sup> As per *Section 10, Indian Contract Act, 1872*

requirement), Asset Purchase Agreement, LLP Agreement, Business Merger Agreement, Reseller Agreement and more. Employment contracts include Employment agreements, Non-Compete Agreements, Independent Contractor Agreements, Consulting agreements, Distributor Agreements, Sale Representative Agreements Confidentiality Agreements, Power of Attorney, Pet Care agreements, and more.

## **INTELLECTUAL PROPERTY PROTECTION**

Such an idea that is in the mind of an individual that creates original works or inventions is said as intellectual property. The legal rights and protections of intellectual property are said as Intellectual Property Protection. This protection allows the creators to prevent others from using the creation or invention without permission.

### **FORMS OF IPR**

Patents - Patents prevent others from making, selling, or using the same creation, invention, or design for a certain period of time.<sup>22</sup>

Copyright - Copyright protects the original work of authorship such as books, music, and art from being used or copied without permission.<sup>23</sup>

Trademark - Trademarks protect a brand name, Logo, or slogan and prevent others from using similar marks.<sup>24</sup>

Trade Secrets - Trade Secrets protect confidential information such as a recipe, processes, formulas, or methods that helps a company to get a competitive advantage.

## **EMPLOYMENT LAW**

Manpower is one of the basic needs to run a business or organization. The number of employees grows every day. Approx 522 million people were employed across India IN Financial Year-2022.<sup>25</sup> For rights of employees including hiring and firing practices, salary and incentive,

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<sup>22</sup> As per Section 67-72, Register of Patents, *The Patent Act, 1970*

<[https://ipindia.gov.in/writereaddata/Portal/IPOAct/1\\_31\\_1\\_patent-act-1970-11march2015.pdf](https://ipindia.gov.in/writereaddata/Portal/IPOAct/1_31_1_patent-act-1970-11march2015.pdf)>

<sup>23</sup> As per Section 14, *The Copyright Act, 1957*

<<https://copyright.gov.in/documents/copyrightrules1957.pdf>>

<sup>24</sup> As per Section 2 (2) (b), *Trademark Act, 1999*

<[https://legislative.gov.in/sites/default/files/A1999-47\\_0.pdf](https://legislative.gov.in/sites/default/files/A1999-47_0.pdf)>

<sup>25</sup> Number of employed person Report by Statista (Published by Manya Rathore, 12 September 2022)

<<https://www.statista.com/statistics/1320065/india-number-of-employed-persons/>>



workplace safety, unfairness and harassment, and personal benefit these all-legal issues governed by the branch of law i.e., Employment Law.

### **IMPORTANT SECTIONS OF EMPLOYMENT LAW IN BUSINESS**

Equal Employment Opportunity (EEO) - This section of employment law gives rights against discrimination against employees based on their color, race, religion, sex, national origin, age, or disability.<sup>26</sup>

The Fair Labour Standards Act (FLSA) - This section of employment law provides minimum wage and overtime requirements and regulations for child Labour.<sup>27</sup>

Family and Medical Leave Act (FMLA) - This section of employment law protect the job of an employee due to family or medical reason up to 12 weeks of unpaid leave to an eligible employee.<sup>28</sup>

Occupational Safety and Health Act (OSHA) - This section of employment provides a safe and healthy work environment for an employee, by providing essential training and protective equipment.<sup>29</sup>

Employee Retirement Income Security Act (ERISA) - This section of employment law provides benefit plans such as Retirement plans, health insurance, and disability benefits.<sup>30</sup>

### **COMPLIANCE AND REGULATORY MATTERS**

Compliance and Regulatory matters are crucial forms to run a business to avoid legal and reputational risk. Compliance refers to following laws, regulations, policies, and ethical standards established by regulatory organizations and government agencies. While regulatory matters refer to the rules and regulations that govern the particular sector in which, a firm or a business operates. Areas where compliance is necessary to include finance, accounting, taxation, environmental regulations, labor laws, health and safety, data privacy, and

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<sup>26</sup> As per *Title-VII, Section 201 (a) The Civil Rights Act, 1964, 78 Statute*

<<https://www.govinfo.gov/content/pkg/COMPS-342/pdf/COMPS-342.pdf>>

<sup>27</sup> As per *Section 14 (c), FLS Act, 1938*

<<https://www.govinfo.gov/content/pkg/COMPS-1514/pdf/COMPS-1514.pdf>>

<sup>28</sup> As per *Section 102, FML Act, 1993*

<<https://www.govinfo.gov/content/pkg/COMPS-1832/pdf/COMPS-1832.pdf>>

<sup>29</sup> As per *Article 16, The Occupation Safety and Health Working Condition Code, 2020*

<[https://labour.gov.in/sites/default/files/OSH\\_Gazette.pdf](https://labour.gov.in/sites/default/files/OSH_Gazette.pdf)>

<sup>30</sup> Followed by *ERIS Act, 1974*

security. Regulatory matters involved obtaining licenses and permits, submitting reports and disclosures, and complying with industry-specific regulations. This may be set up by regulatory bodies such as the Securities and Exchange Commission (SEC) Environmental Protection Agency (EPA) and the Occupational Safety and Health and Administration (OSHA).

## TAXATION

Taxation in India is primarily governed by the Income Tax Act, of 1961, which sets out the rules and regulations for administering direct taxes in the country. Income Tax law is driven by the Central Direct Tax Board (CBDT) which is part of the Department of Revenue of the Ministry of Finance.

There are other laws in India apart from the Income Tax Act –

Goods and Services Tax (GST), 2017 - It applies to the supply of goods and services.<sup>31</sup> GST may vary for different goods in four slabs that are 5%, 12%, 18%, and 28%.<sup>32</sup>

Customs Act, 1962 - This law governs the collection and Levy of customs duty on imports and exports. The custom duty charges differ from item to item.<sup>33</sup>

Central Excise Act, 1944 - This law governs the collection and levy of excise duty on the production and manufacturing of goods.<sup>34</sup>

Foreign Exchange Management Act, 1999 - This law governs the inflow and outflow of a foreign currency or foreign exchange transactions in India.<sup>35</sup>

Transfer Pricing Regulation - It requires businesses to regulate the fair value of transactions between related parties such as subsidiaries and Affiliates.<sup>36</sup>

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<sup>31</sup> As per *Section 2 (54), GST Act, 2017*

<<https://cbic-gst.gov.in/pdf/CGST-Act-Updated-30092020.pdf>>

<sup>32</sup> GST Rates for Goods and Services as on 1 March 2023

<<https://cbic-gst.gov.in/gst-goods-services-rates.html>>

<sup>33</sup> Basic Customs Duty means the customs duty levied under *the Customs Act, 1962*

<[https://www.indiabudget.gov.in/budget\\_archive/ub2000-01/mem/mem3.pdf](https://www.indiabudget.gov.in/budget_archive/ub2000-01/mem/mem3.pdf)>

<sup>34</sup> *ibid*

<sup>35</sup> As per *Section 2 (n), Foreign Exchange Management Act, 1999*

<[https://legislative.gov.in/sites/default/files/A1999-42\\_0.pdf](https://legislative.gov.in/sites/default/files/A1999-42_0.pdf)>

<sup>36</sup> As per *Chapter 10, Income Tax Act, 1961*

<<https://legislative.gov.in/sites/default/files/A1961-43.pdf>>

Double Taxation Avoidance Agreements (DTAA) - It is an agreement between India and another country to avoid double taxation of the same income.<sup>37</sup>

## **DISPUTE RESOLUTION**

Dispute resolution in a business refers to the process of resolving conflicts or disagreements that arise between parties or organizations. These disputes can originate between employees, between the business and its suppliers, customers, or competitors, or between the business and other stakeholders. Dispute resolution is crucial to maintain a positive, healthy, and productive work environment, reducing legal and Financial Risks, and protecting organizations' reputation.

## **METHODS OF DISPUTE RESOLUTION**

Negotiation and mediation - It is the process to reach a mutually acceptable solution between the parties involved in a dispute. Negotiation can be done by a neutral third party or informally between the parties or organization.

Arbitration - It is a process where a neutral third party known as an arbitrator, listens to the arguments of the parties involved in a conflict and makes a binding decision. Arbitration is defined under the Arbitration and Conciliation Act, of 1996.<sup>38</sup>

Litigation - It is the process of resolving a dispute through the court system.

## **CONCLUSION**

Legal works are very necessary for businesses or organizations as they protect the business from legal disputes, help ensure compliance with rules and regulations, and manage risk. Legal work includes business registration, drafting and reviewing contracts, helping with the protection of Intellectual Property through different forms of IPR like patents, copyrights, trade secrets, and trademarks, advising to deal with labor laws, knowing compliance and regulatory issues, taxation, and resolving disputes. Businesses need to work with qualified and experienced legal professionals to avoid potential legal pitfalls. By increasing the legal works,

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<sup>37</sup> As per *Chapter 9, Section 90A, Income Tax Act, 1961*

<sup>38</sup> As per *Section 2 (a), The Arbitration and Conciliation Act, 1966*  
<[AAA1996\\_26.pdf \(indiacode.nic.in\)](#)>

businesses can run and operate more efficiently and effectively, build trust with their customers, suppliers, stakeholders, partners, employees, etc, and reduce legal risk.

