



A COMPLETE STARTUP'S ADVISORY



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INTRODUCTION

This document has been compiled in order to guide entrepreneurs in certain legal aspects of doing business.

This document aims to shed light upon aspects such as start-up development process, legal documentation and matters in which the support of lawyers would be required at various stages of development of a start-up, overview of the foreign investment regime etc. However, please note that this document is purely for information purposes, and shall not be considered to be legal advice in any manner.

OVERVIEW OF START-UP's

1. What is a start-up?

A. A startup is a young company founded by one or more entrepreneurs to develop a unique product or service and bring it to market. By its nature, the typical startup tends to be a shoestring operation, with initial funding from the founders or their friends and families.

2. What is the major difference between a startup and a large corporation?

A. A startup is a newly established initiative designed to search for a stable, repeatable and scalable business model. A large company, on the other hand, is a permanent organization designated to execute a repeatable and scalable business model, startups are essentially looking for one.

3. What is the major difference between a startup and a small business?

A. A small business isn't in search of a stable business model that will work after a significant amount of time. They essentially look for small scale business that works from day 1 and continues like that. Unlike startups, small businesses are self-sustaining organizations and don't necessarily require funding, they generate revenue from the first day of their opening. There is no need for major investments and time to formulate how a company works.

4. How does one evaluate a startup's potential?

A. There are a few factors that we need to take into consideration:

- a. Market opportunities
- b. Market timing
- c. Team structure and team commitment.
- d. Scalability must be fast growing
- e. Growth ambition

The success formula used to evaluate it theoretically combines all these factors and comes out as follows:

Success Formula

idea + timing + plan x execution
= reaching the target

idea + timing + plan (set of initial assumptions) **x execution** ((volume & speed x validating assumptions - failures) + (volume & speed x validating learning based new assumptions - failures)) = **reaching the target**

The key element of this formula for success is the **multiplication between idea, timing and plan AND execution (x)** ie. the **team and efficiency of processes**. If execution is zero, there will be nothing. The higher the execution volume and speed are, the better the likelihood of success is.

5. What is the difference between transformational/exponential and incremental growth and which one is a better option for a startup?

A. An incremental growth approach might take the strategy of gradually building users, increasing by a small number daily. Perhaps this increase would have been achieved by making more people aware of a product through, say, spending money on ads, then spending more money to gain even more users. That's the premise of many start-ups, but this doesn't equal success. Increasing acquisition spend on increasing users is not highly sustainable if your product isn't what those users want.

Instead, exponential thinking would leave you to keep integrating and improving the product there is. This can be difficult, especially if you're under pressure from funders or management. However, when growing a business, either your own or one you are part of, disregard incremental thinking. To be an entrepreneur, you need to employ exponential thinking at all times.

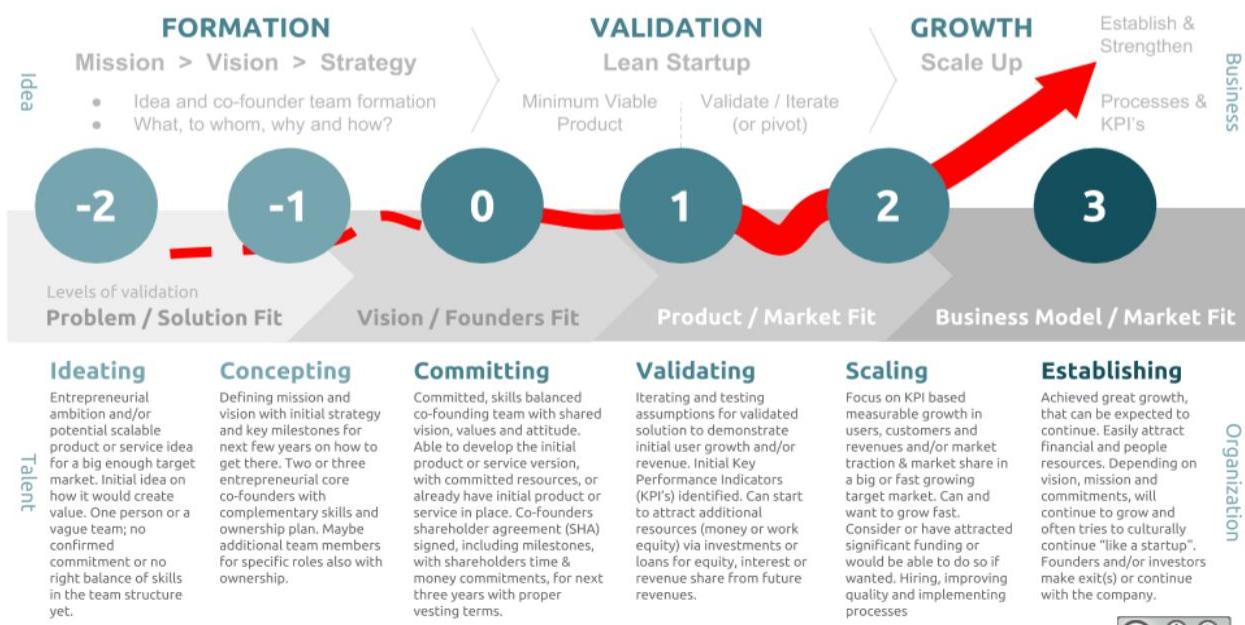
6. What are the major reasons for failure of startups?

- a. Doing startups for the wrong reasons, for eg: Starting a business to become a millionaire.

- b. Conceiving a wrong notion about the market and product. It is important to know that no one knows everything about market analysis.
- c. Lack of persistence
- d. Lack of funds/running out of money
- e. Inability to innovate and adapt to future trends
- f. Afraid of taking risks, experimenting and diving in all forces.
- g. Inability to put together a good team
- h. Lack of guidance and mentorship.

7. Briefly explain the Startup development process.

- A. The development process of a startup can be broken down into 6 major parts:
 - a. Formation
 - b. Validation
 - c. Growth
 - d. Validating
 - e. Scaling
 - f. Establishing



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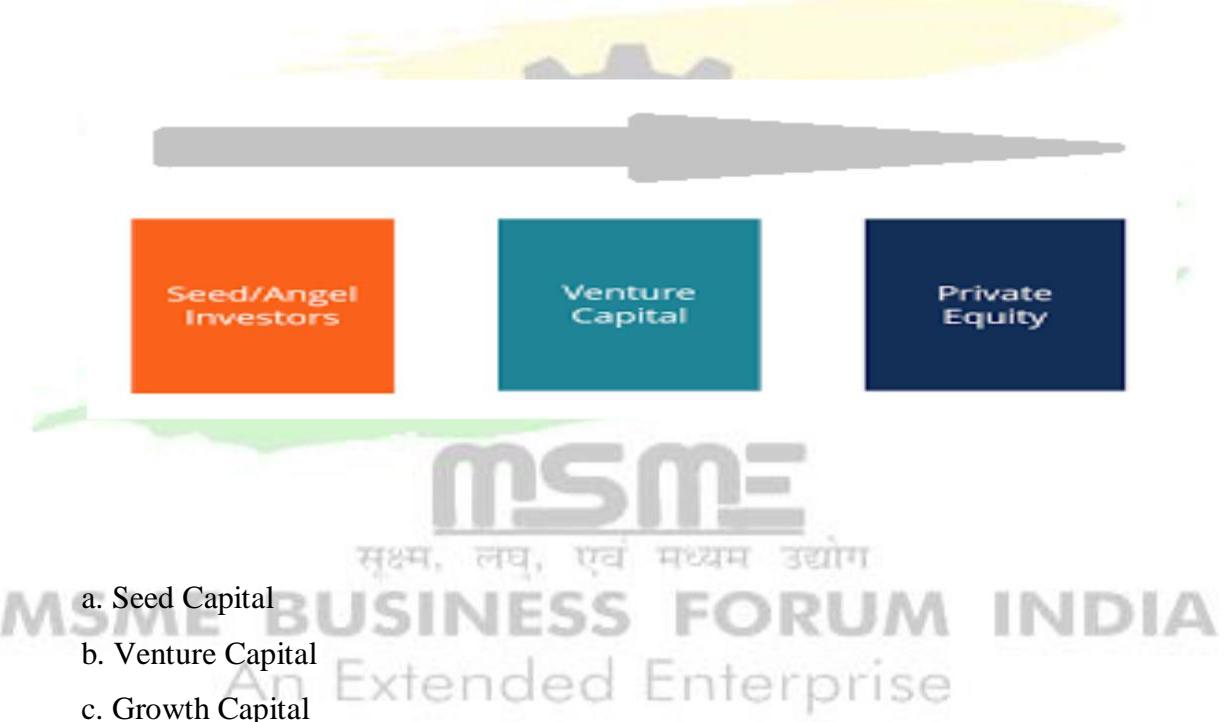


1. **Ideating:** This is the first stage in the development process. In this stage, the entrepreneur(s) identify a problem in the market and come up with a solution to overcome that problem, and this solution would become the product or the service that this start-up would provide. This is the stage where the idea is born.
2. **Concepting:** This is the second stage in the development process. In this stage, the entrepreneur(s) define the mission and vision with initial strategy and key milestones. Here, there are two or three entrepreneurial core co-founders with complementary skills, there may be an additional team of advisors.
3. **Committing:** This is the third stage in the development process, and the stage where the company is established, and the work on the product or the service starts. Funds are raised through various ways at this stage to materialize the business idea.
4. **Validating:** This is the fourth stage in the development process. The following things take place in this stage:
 - (a) Proof of Concept on Target Customer
 - (b) Iterating and testing assumptions for validated solution to demonstrate initial user acceptance
 - (c) Gaps Analysis and rectification.
 - (d) Defining initial key performance areas (KPA's) and key result areas (KRA's)
5. **Scaling:** This is the fifth stage in the development process. In this stage, the product/service of the company enters the market and tries to penetrate it. The focus is on growth and customer acquisition, organization building, hiring employees, improving quality of the product/service and implementing processes that were planned.
6. **Establishing:** This is the last stage in the development process. In this stage, focus is customer acquisition & market share, enhancing organization building and capacity and processes, marketing mix optimization (4P's) and multi-generation product planning and development

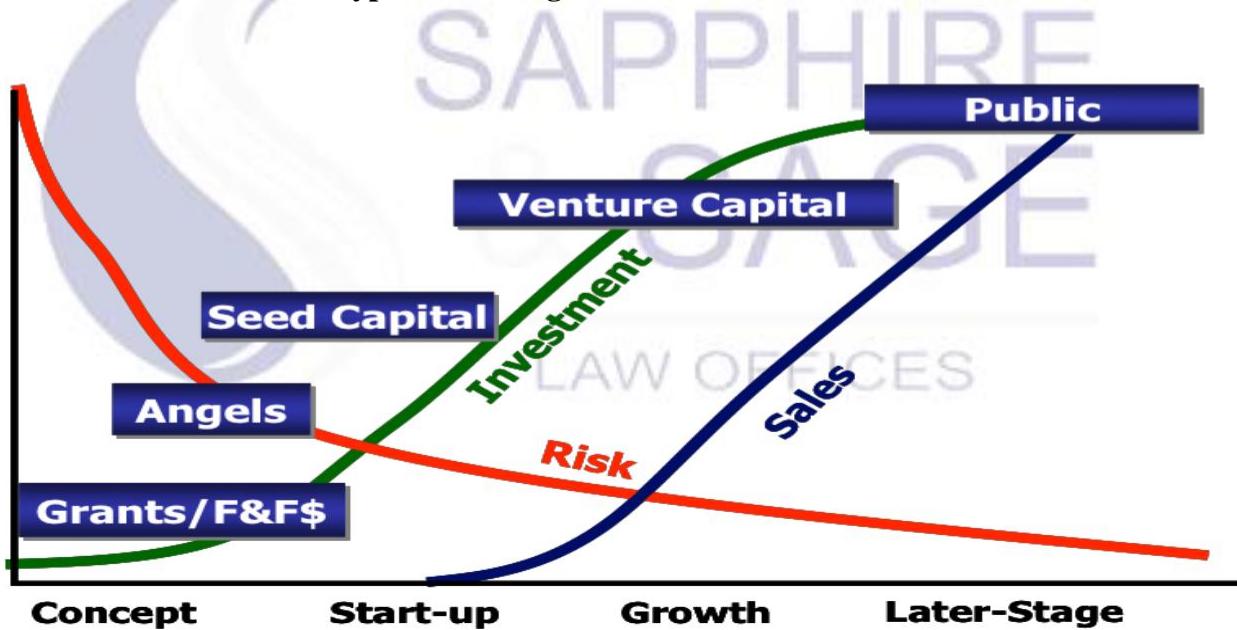
STARTUP FUNDING FUNDAMENTALS

1. Explain private startup funding.

A. There are three categories of startup funding:



2. What are the various types of funding?



S.no	Type of funding	What is it?	Advantages	Disadvantages	Who gives the money?
1.	Bootstrapping	Bootstrapping is building a company from the ground up with nothing but personal savings, and with luck, the cash coming in from the first sales.	<ul style="list-style-type: none"> • Greater focus • Easier pivoting • No dilution of ownership 	<ul style="list-style-type: none"> • Lack of investor support • Too much personal risk. • Extremely time consuming with respect to growth 	Self-financing by the promoters
2.	Friends and families	<p>Investment by friends and families in your business is a great way to get started. This is why entrepreneurs spend a great deal of time enhancing their social circle.</p>	<ul style="list-style-type: none"> • Once they have put their money, they will support you with their network expertise and knowledge. • Easier communication and less intrusion in the management • Based on trust 	<ul style="list-style-type: none"> • If the idea fails, it might impact personal relationships. • Skepticism about liability and responsibility in the money invested in case an idea fails. 	Promoters social network. (Friends and family)

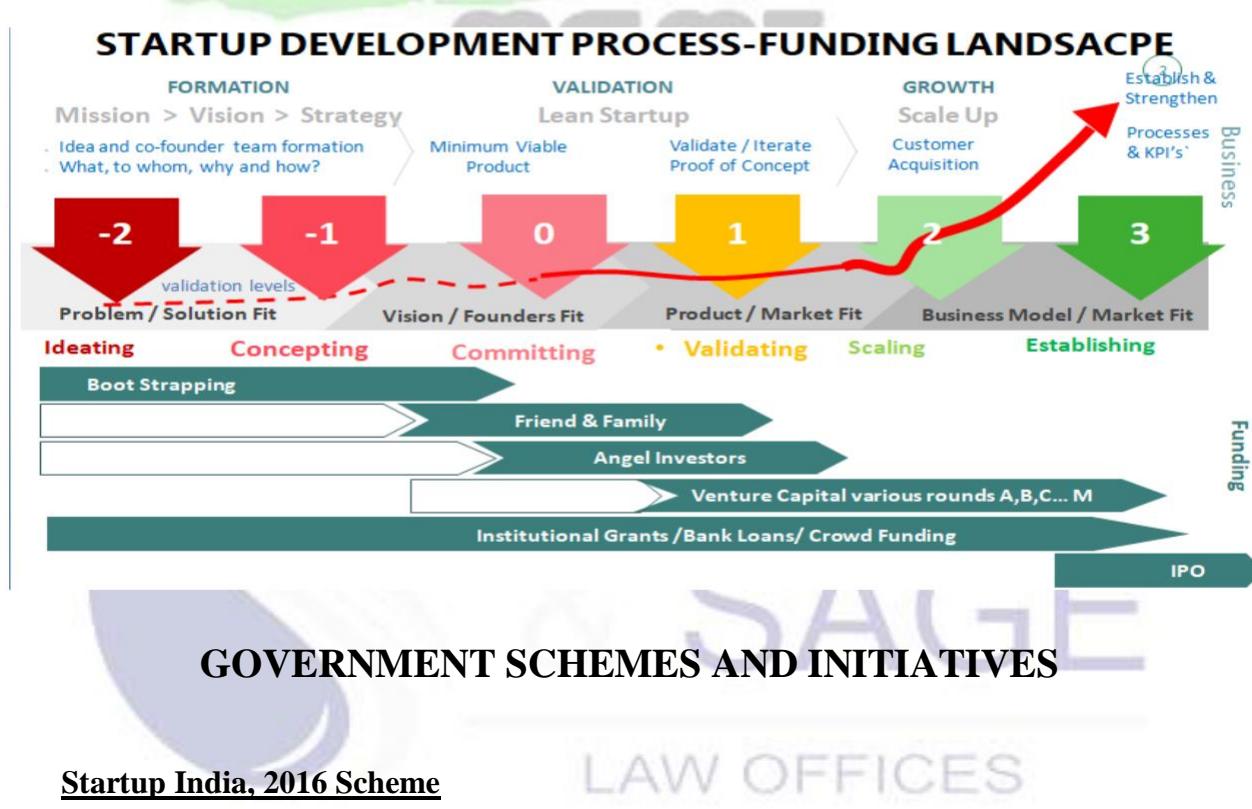
3.	Angel Investors	An angel investor is a person who invests in a new or small business venture, providing capital for start-up or expansion. Angel investors are typically individuals who have spare cash available and are looking for a higher return than would be given by more traditional investments.	<ul style="list-style-type: none"> • Willing to take risks and invest in startups that have a vision and motivated team. • Early investment • They have friends who invest with them 	<ul style="list-style-type: none"> • They always want an active role in the decision-making process, leading to more intrusion. • Angels come in expecting a way to exit • It's mostly a one-time investment. • There is a lot of equity at stake. 	High Net Worth Individuals (Angels)
4.	Venture Capital	Venture capital is a form of private equity and a type of financing that investors provide to <u>startup</u> companies and small businesses that are believed to have <u>long-term growth</u> potential. <u>Venture capital</u> generally comes from well-off investors, investment banks and any other financial institutions. However, it does not always take a monetary form; it can	<ul style="list-style-type: none"> • Credibility and integrity • Established connections and networking • Corporate expertise • Accelerated growth 	<ul style="list-style-type: none"> • Time consuming process • Lack of growth strategies and structures. • Profit shares are diluted • Micromanagement • Equity loss and demand 	Venture capital firms

		also be provided in the form of technical or managerial expertise. Venture capital is typically allocated to small companies with exceptional growth potential, or to companies that have grown quickly and appear poised to continue to expand.		of preferential shares.	
5.	Incubators/accelerators	Accelerators “accelerate” the growth of an existing company, while incubators “incubate” disruptive ideas with the hope of building a business model and a company. So, accelerators essentially focus on scaling of the business while incubators focus more on innovation.	<ul style="list-style-type: none"> ● Mentorship ● Collaboration ● Network building 	<ul style="list-style-type: none"> ● Equity ● Location ● Alignment to incubators/accelerators needs 	<ul style="list-style-type: none"> ● Industries ● Universities ● Corporates ● Govt. bodies
6.	Crowd funding	Process of raising capital for a business or a business idea, using the internet and social media platforms by reaching out to a large group of people. *Equity crowd funding is illegal in India by SEBI	<ul style="list-style-type: none"> ● Access to “cheap money” ● Prefunding ● Community building 	<ul style="list-style-type: none"> ● Requires a lot of preparation in advance ● High pressure due to transparency requirements 	<ul style="list-style-type: none"> ● Public

7.	Institutional grant	A small business grant is money given by private business' or corporations, federal, provincial or local governments, for a specified purpose or project. It does not have to be paid back unless the small business/startups go against the conditions specified in the agreement signed.	<ul style="list-style-type: none"> ● Equity free ● Validation by a larger organization/corporation 	<ul style="list-style-type: none"> ● Some amount of self-financing is also required ● Less flexibility because you need to adhere to the conditions by the investors. ● Time 	Government institutions
8.	Banks	Banks are the largest business loan lenders and probably your first thought of an investor.	<ul style="list-style-type: none"> ● Low fixed interest rates ● Predictable monthly payments. ● Helps build business credit. ● No dilution of equity 	<ul style="list-style-type: none"> ● Lengthy paperwork ● Longer waiting period ● Difficulty to qualify ● Requires strong credit ● Collateral required 	Banks
9.	IPO	This method can be exercised when the Company has established itself in the market and can pass the tests of the SEBI. Through an IPO, the securities of company are offered to the public.	<ul style="list-style-type: none"> ● A large amount of money can be raised by this single move ● The value of the company would be decided by the 	<ul style="list-style-type: none"> ● Requires a lot of preparation in advance ● Lengthy Paperwork is required ● Since the Company becomes a 	<p>High Networth Individuals, Qualified Institutional Buyers, Mutual Funds and Retail Investors</p>

		market.	Public Listed Company, it will be heavily regulated by the SEBI.	
			<ul style="list-style-type: none"> • Legal Compliances increase. 	

3. How does the funding landscape fit in the startup development process?



1. What is a Startup under the Scheme?

A. The scheme describes a “Startup” as an entity which has been incorporated or registered in India, not prior to five years, under the following:

- Companies Act, 1956 for a private company.

- Partnership Act, 1932 for a registered partnership firm.
- Limited Liability Partnership Act, 2008 for a Limited Liability Partnership.

2. How can we decide whether or not a business falls under the scope of a start up?

A. Any entity can be a Start Up, provided:

- Annual turnover not exceeding INR 25 crores in any preceding financial year, for SU's working on new products, processes or services driven by technology or intellectual property.
- That such entity is not formed by splitting up, or reconstruction, of a business already in existence.
- The business will cease to be a Start Up if it has completed 5 years from the date of incorporation/ registration.

3. What is the objective of the Scheme?

- To develop a Startup ecosystem and enable knowledge exchange and access to funding.
- Work in a hub and collaborate with Central & State governments, Indian and foreign VCs, angel networks, banks, incubators, legal partners, consultants, universities and R&D institutions.

4. What are the incentives under the Scheme?

- Fast-tracking of Startup patent applications: The valuation of any innovation goes up immensely, once it gets the protective cover of a patent. Central Government to bear facilitation cost: Under this scheme, the Central Government shall bear the entire fees of the facilitators for any number of patents. Further, Startups shall be provided an 80% rebate in filing of patents vis-a-vis other
- Relaxed Norms of Public Procurement for Startups: Central Government, State Government and PSUs have to mandatorily procure at least 20% from the Micro Small and Medium Enterprise (MSME) for works, supplies and services by public bodies. In order to promote Startups, Government shall exempt Startups (in the manufacturing sector) from the criteria of "prior experience/ turnover" without any relaxation in quality standards or technical parameters.

- Faster Exit for Start-Ups To make it easier for Startups to wind up operations: Under The Insolvency and Bankruptcy Bill 2015 (“IBB”); wound up within a period of 90 days from making of an application for winding up on a fast track basis. An insolvency professional shall be appointed for the Startup.

5. What are the funding incentives under the Scheme?

- Funding Support: Fund of Funds With a Corpus of INR 10,000 Crores. The Fund will be in the nature of Fund of Funds, which means that it will not invest directly into Startups but shall participate in the capital of SEBI registered Venture Funds. The Fund of Funds shall be managed by a Board with private professionals drawn from industry bodies, academia, and successful Startups. Life Insurance Corporation (LIC) shall be a co-investor in the Fund of Funds the Fund of Funds shall contribute to a maximum of 50% of the stated fund size. In order to be able to receive the contribution, the enterprise should have already raised the balance 50% or more of the stated fund size.
- Credit Guarantee Fund for Startups: Debt funding to Startups is also perceived as high risk and to encourage Banks and other Lenders to provide Venture Debts to Startups. Credit guarantee mechanism through National Credit Guarantee Trust Company (NCGTC)/ SIDBI is being envisaged with a budgetary Corpus of INR 500 crore per year for the next four years.

6. What are the tax incentives under the Scheme?

A. Tax Exemption to Startups for 3 years: It is imperative that the profits of Startup initiatives are exempted from income-tax for a period of 3 years. This fiscal exemption shall facilitate growth of business and meet the working capital requirements during the initial years of operations.

Tax Exemption on Capital Gains: Exemption shall be given to persons who have capital gains during the year, if they have invested such capital gains in the Fund of Funds recognized by the Government. ° This will augment the funds available to various VCs/AIFs for investment in Startups. To promote investments into Startups by mobilizing the capital gains arising from sale of assets.

7. What is the incubator provision under the Scheme?

A. An incubator is essentially a place, especially with support staff and equipment, made available at low rent to new small businesses.

- Setting Up Of Incubators: 35 new incubators in existing institutions
- Funding support of 40% (subject to a maximum of INR 10 crore) shall be provided by Central Government for establishment of new incubators for which 40% funding by the respective State Government and 20% funding by the private sector has been committed. The incubator shall be managed and operated by the private sector.
- 35 new private sector incubators: A grant of 50% (subject to a maximum of INR 10 crore) shall be provided by Central Government for incubators established by private sector in existing institutions. The incubator shall be managed and operated by the private sector.
- Set up 18 Technology Business Incubators (TBIs) at NITs/IITs/IIMs etc.

8. Other Government Schemes that have paved the way for Startups in India

- **Atal Incubation Centre (AIC):** Started by the NITI Aayog in 2016, AIC is an innovative funding scheme to promote entrepreneurs by covering their capital operational costs. The selected startups will be granted funding up to Rs 10 crore over a period of five years. The candidate will have to provide at least 10,000 sq. ft of space for the infrastructures such as laboratory and workshop facilities, utilities, support services, pre-incubation services, networking, mentoring and other facilities within a period of six months from the date of release of funds for capital and operational expenditure.
- **NewGen IEDC:** In 2017, the Department of Science & Technology (DST) introduced the New Generation Innovation and Entrepreneurship Development Centre (NewGen IEDC) programme. The programme is implemented by the Entrepreneurship Development Institute of India (EDII), Ahmedabad. The NewGen IEDCs are established in academic institutions where students can work on innovative projects over a period of five years.

- **MSME Market Development Assistance:** Startups, Micro, Small and Medium Enterprises (MSME) and retailers registered with Directorate of Industries/District Industries Centre can avail this scheme to expand their businesses across the world through international trade fairs and exhibitions. Companies registered with Directorate of Industries/District Industries Centre can get up to 100 per cent reimbursement on airfares and cost of placing their stalls in such fairs/exhibitions, all over the world.
- **The Women Entrepreneurship Platform:** Launched by the NITI Aayog, the WEP is for budding and existing women entrepreneurs across India.
It is divided into three aspects:
 Iccha Shakti: motivating women entrepreneurs to start their business
 Gyaan Shakti: Provides knowledge and ecosystem
 Karma Shakti: Provides hands-on support to entrepreneurs to set up or scale business
Women at the ideation stage and established startups can register for the scheme. Corporates, NGO, organisation, incubators can also apply provided that they are supporting women in any form.
- **Self-Employment Lending Schemes Credit Line 2- Micro Financing Scheme:** The National Minorities Development & Finance Corporation (NMDFC) scheme provides loan at the doorstep of the beneficiaries. Only NGOs and Self-Help Groups (SHGs) are eligible to apply. Persons from the lower economic background and women from the minorities will be given preference. Applicants should belong to households with an annual income of Rs 6 lakh.
- **Swarojgar Credit Card:** Small artisans including micro-entrepreneurs, Mall artisans, Handloom weavers, Service sector, Fishermen, self-employed persons, rickshaw owners, other micro-enterprises are eligible for the Swarojgar Credit Card. Under this scheme, a loan of Rs 25,000 will be given per person and the interest and margin will be as per RBI's norm.

- **Venture Capital Scheme for Agri-Business Development:** Started by Small Farmer's Agribusiness Consortium (SFAC) this scheme aims to promote agricultural development in the country by providing a market to producers and assisting farmers and agriculture graduates to enhance their participation.
- **Raw Material Assistance Scheme:** In order to encourage entrepreneurs to improve the quality of their products, this scheme under the National Small Industries Corporation finances the purchase of indigenous and exported raw materials.
- **Pradhan Mantri Mudra Yojana:** To support the micro-enterprise sector MUDRA scheme provides loans up to ten lakhs without collaterals. Enterprises wanting to expand in fields of technology up-gradation or other projects can also take advantage of this scheme.
- **Sustainable Finance Scheme:** This scheme provides financial assistance in the form of loans for sustainable development projects that contribute to energy efficiency and cleaner production. All sustainable development projects such as renewable energy projects, Bureau of Energy Efficiency (BEE) star rating, green microfinance, green buildings and eco-friendly labelling, etc. are applicable.



STRUCTURE AND VALUATION

1. Which corporate vehicle should one choose for start-ups?

Corporate Vehicle	Advantages	Disadvantages
Limited Liability Partnership	<ul style="list-style-type: none"> - Relatively less burden of compliance 	<ul style="list-style-type: none"> - Limited in accommodating new financial investors for expanding the business - Fails to provide a lucrative option such as ESOPs to incentivize the employees - Unlimited liability extending to personal assets of the entrepreneur, in case if the start-up fails, in-term, incurring losses
Private limited Company	<ul style="list-style-type: none"> - Demarcates the roles and responsibilities of the individuals unambiguously - Increased transparency to the investors, especially in case of compliances and financial numbers, which helps induce them to make an investment - Provides for fast winding up under IBC - Limited liability of the founders, thus shielding the entrepreneur's personal assets from exposure - Provides for a lucrative option such 	<ul style="list-style-type: none"> - Relatively more burden of compliance

	<p>as ESOPs to incentivize the employees</p> <ul style="list-style-type: none"> - Transparent structure allows for the owners of the company to be demarcated from the management of the company 	
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Therefore, one can observe that the Private limited company even if with more burden of compliances, in light of its advantages, should be the preferred option for the start-ups.

2. How are the start-ups valued?

A. The valuation of the start-ups is a combination of subjective and objective; although there exist some methods which one used in the valuation of the start-ups but sitting across the highly motivated President/Vice President of the company certain bias tend to inculcate at times.

The founders for who want to get the investments based on the valuation would want to consider a higher valuation as opposed to the seasoned investor, who has been through many of such start-up pitches. Valuation of a start-up is different from the valuation of other types of businesses, as on one hand the risk exposure is very high as the model is new and not tested and on the other hand it is difficult to see exponential returns of the new business. The process of valuation of the start-ups incorporates the following steps:

- **The Multiples method** – if the start-up is identified to be operating in a particular industry, in that case, a multiple of the revenue of the start-up prevailing in that sector is considered while valuating the start-up. For instance, in the FMCG sector, such multiple of revenue is considered as 7.
- **The Earning method** – To value a start-up, one looks at the valuation of the company and how much cash flow can be generated by the company. The discounted cash flow is used to predict the cash flow in term the valuation of the future. However, the greater number of years one tries to predict into the future, the more noise develops. The two used approaches under this method are:

- **Top-down approach** –The addressable market, the total number of prospects that would benefit out of the product/service, of the start-up is determined. Followed by identifying to what portion of that addressable market can a start-up serve, which is termed as the serviceable market. Based upon these parameters, the growth of the start-up is predicted which helps in valuation.
- **Bottom-up approach** – This approach is used in case if the startup can operate only in a fixed capacity with x% of growth per month, then the same is used in the valuation of the start-up and the wider market is not looked at.
- **Weights Analysis** - Certain weights are assigned to the parameters based upon the industry multiple and the earning capacity and how much innovation can justify the high growth. These weights are multiplied with the results obtained from the multiples method and the earnings method to obtain final figures out of those methods.
- Having obtained these figures, only in the case where the Multiples method exists, based upon the fact that the start was identified to be operating in a particular industry, would an average of the two figures would be taken in order to obtain the final objective results of the start-up evaluation.
- Having said that, there also exists many subjective variables which cannot be defined in numbers but have an impact on the final valuation.

3. How are the tax and other compliances relevant to getting funding?

- A. By keeping up with the compliances, maintaining transparent accounts, and having a good book-keeping software help the start-up in getting the clean chit in due diligence for any addition investment to be raised. In addition to the same, the investors also tend to invest in the start-ups which have their compliances to be in order. Lately, the Govt. of India is incentivizing start-ups for making transactions through the bank.

LEGAL DOCUMENTATION

1. What is the necessary legal documentation Pre-Incorporation?

- a. Startup has to decide whether they want to be incorporated as an LLP, partnership or a company. Generally, the startups prefer to be incorporated under a private company because it is easier to structure and is a relatively simpler vehicle for channelling foreign investments (through tax effective jurisdictions). Further, as per the amended Companies Act, 2013, there is no requirement for minimum paid up capital which is a welcome move especially for startups by the government.
- b. You can either start your incorporation process by the startup Indian portal or take the traditional process used by the companies.

2. What is the traditional process for incorporation?

- It is mandatory for the Directors to have a PAN number, DIN and DSC for initiating the process.
- Then the approval for the name is sent to Nodal authorities which the registrar of the companies. Once the name of the startup has been finalized, it is imperative for the directors to register their MOA and AOA with the MCA. After this company has been incorporated and MCA takes around 60 days to register the process.
- Once the company is incorporated most directors, start working on their personal pan account number which is illegal and attracts huge penalty. Therefore, the directors shall obtain a company's PAN Number and open a current bank account for day to day transactions.

3. What are the important legal documentation requirements Post- Incorporation?

1. Founders Agreement

This agreement is beneficial for a startup with multiple directors and parties, wherein it bifurcates the work they intend to do. The agreement should describe the relationship of the founders, and outline a basic communication procedure and entails conflict - resolution clause that can help prevent disputes.

2. Charter Documents:

These documents are the documents which are needed for the incorporations of the company, these documents include the Memorandum of Association and Articles of Association.

The MoA safeguards the structure of business, helps in establishing the company's identity, working methodology, and goal.

The AoA plays a vital role in defining the company's internal workings, their rights, duties and management. It contains the by-laws and other rules & regulations that a company runs by.

3. NDA or Confidentiality agreement

- A non-disclosure agreement ("NDA") is an agreement in which one party agrees to provide access to its confidential information to a second party about its business or products and the second party agrees not to share this information with anyone else for a specified period of time or till the termination of the contract. The agreement can entail the definition of confidential information of the startup, term of the contract, giving information on need to know basis and moreover ensuring that anyone to whom the information is disclosed further abides by the recipient's obligations.

4. Limitation of Liability Clause

- This is often used as a caveat to confidentiality agreement wherein the opposite party can limit the liability to pay for damages. In this scenario, if the first party cannot claim damages than the inscribed amount in the clause.

5. Employment Agreement

- This document briefly outlines the terms and conditions of employment including probationary period, remuneration and other documents required to be produced at the time of joining.
- Term of employment and termination of employment (including as a result of misconduct)

- Compensation structure – remuneration and bonuses;
- Duties and responsibilities of the employee;
- Confidentiality and non-disclosure clause
- Intellectual property and assignment;
- Dispute resolution.

6. Non-Competition or Non solicitation Agreement

- Non-competition/Non solicitation clauses or agreements can be either given to the employee separately or be drafted within the employment agreement. Now there is a lot controversy pertaining to these clauses and while non-compete clauses during the term of employment are generally enforceable in India, a post-termination non-compete clause is not enforceable under Indian laws since they are viewed to be in ‘restraint of trade or business’ under Section 27 of the Indian Contract Act, 1872 (“Contract Act”).
- Non-solicitation agreement or non-solicit clause is essentially a restriction on the employees from directly / indirectly soliciting or enticing an employee, customer or client to terminate his contract or relationship with the company or to accept any contract or other arrangement with any other person or organization. This is legally enforceable in India until and unless the clause is prima facie unconscionable/harsh or one-sided.

7. Employee Handbook/ Hr policy

- Employee handbook is different from agreement as this inculcates employees from all the departments and delves into the standardized rules and regulations of the company for the employee. As various employment laws specific to particular states, the employers shall draft in accordance with laws of national and as well state laws.
- Some of the clauses that can be inculcated are:
 - (a) Employee benefits;
 - (b) Leave policies including paid leave, casual leave, sick leave, maternity leave etc
 - (c) Compensation policies;
 - (d) Code of conduct and behaviour policies;

- (f) Anti- discrimination and sexual harassment policies;
- (g) Immigration law policies;
- (h) Complaint procedures and resolution of internal disputes;

8. Master Agreement

A. As the start-ups passes the nascent stages and expand their business, they tend to work and contract with various players in the market that makes it imperative for them to draft a Master Agreement which entails essential terms assignments and their corresponding payments set out in statements of work under such a master agreement.

9. Addendums to Master Agreements

- **Software License Agreement:** Licenses to use software necessary in the conduct of business. These can be as simple as operating systems.
- **Outsourcing Agreements:** These are particularly relevant in the Indian context. These are generally addendums to master service agreements specifying the scope of work.
- **Customer Contracts:** Agreements entered into with customers. These usually lay out the terms of supply by the company and the terms of payment by the customer. The company may choose to use standard form agreements for smaller customers while larger customers may have negotiated terms.
- **Leases Agreement:** A startup would usually lease the property in which it houses its offices or factory. These property leases need careful drafting and negotiation in order to ensure the utmost clarity and legality of the same. Common issues that arise in leases relate to inadequate stamping and non- registration. Stamping and registration are essential in order to make the lease or any other agreement enforceable in Indian courts

9. SSPA/SHA

A. SSPA is the document through which the terms and conditions, on which a party would subscribe / buy the shares of the company, are decided. It contains conditions such as the CPs, CSs, Reps and Warranties, etc, and lays out the structure of how the transaction would be completed.

SHA is the document which records the rights and liabilities of the parties, the company and the party subscribing/ buying the shares.

10. Miscellaneous Documents

- **Collaboration Agreement:** this agreement would needed to be entered into if the Start-Up needs to collaborate with another company for a particular purpose.
- **Joint Venture Agreement:** this would be needed in case the Start-Up forms a joint venture with another company, or when a foreign investor wants to invest into the Start -Up by forming a joint venture.
- **Consultancy Agreement:** this agreement would be needed to entered into when the Start-Up need to hire a consultant, in order to advise it on a specific purpose.
- **Data Privacy Agreement:** this agreement would be needed to be entered into, with the parties such as: Consumers, Doctors, HCPs, Pharma Companies, Insurance Companies, etc. Basically, with all the parties with whom the data would be shared.
- **Terms of Usage:** this document would be needed for the consumers, so that they can be briefed on how the product would work, and gives them an idea of how this data would be used. This would also prevent suits from the consumers, at the later stages.

4. What is the legal intervention and support required during the starting process?

A. The table below highlights the legal intervention and support that is needed at the various stages of the development.

Stage	Intervention/Support
Ideating	This stage requires no legal intervention or support
	<ol style="list-style-type: none">1. Registering Trademark of the company under the Trademark Act 1999*2. Drafting of Non-Disclosure Agreements (NDA) that would be

Concepting	<p>needed to be signed by every person to whom the idea is pitched.</p> <ol style="list-style-type: none"> 3. Drafting of agreement that would be signed between the Co-founders (shareholder's agreement). 4. Drafting of agreement that would be signed between Co-founders and the advisors (if any). Also, if there are any advisors, an NDA would be needed to be drafted, which they would sign. 5. If money is borrowed by family or friends, an agreement would be required to be executed for facilitating the same. 6. Collaboration Agreement (if the company is collaborating with another entity)
Committing	<ol style="list-style-type: none"> 1. Incorporating and registering the company under the Companies Act, 2013. 2. Drafting of the charter documents. 3. Start-Up recognition with the Department of Industrial policy and promotion. 4. Registration as MSME 5. Registration under Goods and Services Tax (GST) 6. Agreement with the suppliers* 7. Drafting of HR policies and employment agreements* 8. Drafting of confidentiality agreements that will be signed by the employees* 9. Advice on taxation matters 10. Founders & key managerial persons Compensation strategy including cash management 11. If funds are raised through an angel investor, drafting of term sheet, Memorandum of Understanding (MoU), NDA, Share Subscription Agreement (SSA), SHA and negotiating the rights and liabilities of the parties. 12. Making amendments to the AoA, pursuant to the SSA and SHA (if needed).

	<p>13. Secretarial Advice.</p> <p>14. If funding comes from a foreign investor, advice on Foreign Exchange Management Act, 1999 (FEMA), Income Tax and GST advisory on foreign inflows and outflows, payments and receipts, reporting under FEMA and RBI for cross border transactions and investment rounds.**</p> <p>15. Legal Compliance</p> <p>16. Issuing Startup Statutory valuation of instruments required to be issued to investors under Companies Act, 2013 and FEMA</p>
Validating	<ol style="list-style-type: none"> 1. Registering the product/ application/ website/ etc. under Patent/ Trademark/ Copyright/ Design Act (as per the product) * 2. Agreements with the targeted customers on whom the product will be tested. 3. Agreements/Contracts to be executed as per Sector requirement. 4. Regulatory Compliances <ol style="list-style-type: none"> 1. Agreements with Insurance Companies or with any other companies who provide services depending on the Sector.
Scaling	<p>This stage would involve the same steps which are needed in the abovementioned step.</p> <p>The additional steps would be:</p>

	<ol style="list-style-type: none"> 1. Agreement with consumers 2. Agreement with the vendors 3. Agreement with the transporters
Establishing	<p>This stage would involve the same steps which are needed in the abovementioned step. The additional steps could be:</p> <ol style="list-style-type: none"> 1. A merger of the entity by another company. 2. IPO <p>If IPO is to be done, the rules of SEBI would have to be complied with. Also, important documents such as draft red herring prospectus and red herring prospectus would have to be drafted.</p>

* The support in these may be required in the subsequent stages too.

** This funding may result in acquisition of the company or the investor may decide to form a Joint Venture (JV) with the Company. In such case the following support would be needed:

1. Due Diligence of the Company
2. Risk Mitigations
3. Negotiation of Rights and Liabilities of parties
4. Joint Venture Agreement

The support mentioned in the first three points would also be needed in case of a merger.

Miscellaneous Matters:

1. Drafting of Contracts and Agreements as per the situation.
2. Negotiating Contracts
3. Legal support in case of breach of contracts and intellectual property.
4. Litigation/ ADR in case of disputes
5. Miscellaneous Documentation
6. Disclosures and Filings under the applicable acts
7. Transfer of Technology Agreement
8. Licensing Agreement

Support in these matters could be needed at any stage of development.

LEGAL COMPLIANCES

Registering with Startup India

The Government of India launched a scheme called ‘Startup India’ for the promotion of innovation and a robust startup ecosystem in the country. Registering with this initiative allows you to claim many benefits like tax exemptions that could help you boost your business in its initial stages. Your startup would be eligible to register with this government initiative if:

1. It is either incorporated as a private limited company, registered as a partnership firm or a limited liability partnership in India.
2. Its incorporation or registration was less than ten years ago.
3. Its turnover for any of the financial years since incorporation or registration has not exceeded Rs 100 crore.
4. It 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.

*Entities that were formed by splitting up or reconstruction of a business that was already in existence do not count as a startup.

There are a plethora of laws in India, with which a company must comply, in order to conduct business. This part mentions some major laws and compliances under those laws.

1. Companies Act, 2013:

I. Annual General Meeting (AGM)

There should be one AGM every year and there must be a maximum gap of 15 months between 2 AGMs. Approval of financial statements, declaration of dividends, the appointment of auditors, etc. are the principal objective for this meeting.

II. Board Meetings

The first board meeting of the Board of Directors should be held within 30 days of the incorporation of the company. There should be a minimum of two meetings one in each half calendar year. Plus, there should be a gap of at least 90 days between two meetings. Apart

from that, four board meetings are supposed to be held every financial year such that the gap between two consecutive board meetings isn't more than 120 days.

III. Appointment of Auditor

The first Statutory Auditor is supposed to be appointed within 30 days of the company's incorporation in the first board meeting. However, the subsequent auditors could be appointed for 5 years in AGM. Being an applicant, you need to file form ADT -1 for a 5-year appointment. After that, the shareholder endorses the auditor every year in AGM, but there's no need to file ADT-1.

IV. Filing the Annual Return & Financial statements.

MGT-7 is an electronic form issued by the Ministry of Corporate Affairs (MCA) to all the companies to fill their annual return details via electronic mode. Every company registered as a private limited company must file the form MGT -7 every year. Every company for filing the financial statements for each financial year with the Registrar of Companies is supposed to file form AOC-4.

V. Filing Directors' Report, Disclosure of Directors interest & Directors Disclosure of non-disqualification.

The board report shall contain details of the state of the company, operations during the year, dividend declaration, net profit, and its compliance with a set of financial, accounting, and corporate social responsibility standards.

The form MBP-1 needs to be filed by every director of the company in the first meeting of the Board of Director in every financial year where they would disclose their interest in other entities.

Every director of the organization in every financial year must file form DIR -8 with the Company Disclosure of non-disqualification.

VI. Maintenance of Statutory registers and Books of Accounts:

- a) Minutes book

- b) Statutory Registers
- c) Books of Accounts or Financial Statements (as per Section 44aa).
- d) Register of Directors Attendance at Committee or Board meetings.

2. Income Tax Act, 1961:

- I. Filing of Income Tax Returns (ITR)
- II. Filing of Tax Audit Report
- III. Filing TDS Returns
- IV. Assessment of advance tax liability and payment of the advance tax should be done periodically.

3. Goods and Services Tax, 2017:

- I. Registration under the GST Act:
- II. Filing of GST return monthly and quarterly except those following in the below-described category.

4. Labour Laws:

Although there are a plethora of labour laws, this document will shed light upon four acts, which are important from the point of view of a start-up.

The Employee's State Insurance Act, 1948:

This act makes it mandatory for certain establishments to get them registered with the State Insurance Corporation and contribute to the State Insurance Corporation Fund.

Employee Provident Fund Scheme, 1952:

This act makes it mandatory for certain establishments to contribute towards the Provident Fund of the employees.

Maternity Benefit Act, 1961:

This act makes it mandatory for the company to provide the following benefits:

- I. Every woman shall be entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.
- II. The nominee/ legal representative would be entitled for payment of maternity benefits of the woman, if she dies, in the cases where she was entitled to such benefits.
- III. Women are entitled to medical bonus in certain cases.
- IV. Women are entitled to receive leave for miscarriage
- V. Women are entitled for leave for illness arising out of pregnancy, delivery, premature birth of child, or miscarriage.
- VI. Women are entitled for nursing breaks

These benefits shall be provided only if she has actually worked for the company for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013:

This act makes it mandatory for the company to:

- I. Constitute an Internal Complaints Committee
- II. Prescribes the way in which the complaint shall be inquired into.

This act also has a set of duties given under Section 19, that every company shall comply with.

In the case of certain labour legislation, no inspections will be conducted for three years, but Startups may be inspected on receipt of a credible and verifiable complaint of a violation, filed in writing and approved by at least one level senior to the inspecting officer.

5. Environmental Law

Any industry, operation or process or an extension and addition thereto, which is likely to discharge sewage or trade effluent into the environment or likely to emit any air pollution into the atmosphere will have to obtain consent of the State Pollution Control Board under the provisions of Water (P & CP) Act, 1974 and Air (P & CP) Act, 1981. Similarly any industry / process generating, storing, transporting, disposing or handling hazardous waste as defined in schedule 1 and 2 of Hazardous waste (Handing and Management) Rules, 1989, as amended in 2000 are required to obtain authorization from MPC Board under the said rules.

The medical institutions generating biomedical waste as defined in Biomedical Waste (M & H) Rules, 1989 are required to obtain Authorization under the said rules.

There are three types of consent issued under the provisions of Water (P & CP) Act 1974 and Air (P & CP) Act, 1981.

- a) **Consent to Establish:** All the industries and activities requiring consent must obtain consent to establish before actual commencement of the works for establishing the industry/activity.
- b) **Consent to Operate:** This consent needs to be taken before actual commencement of production including trial production. This consent is valid for certain duration.
- c) **Renewal of Consent to Operate:** The consent to operate is renewed after a certain period.

Also, the company/ industry/ operations shall not emit the pollutants above the limit prescribed by the government, as per the Environmental Protection Act, 1986.

The startups falling under the *White Category* would be able to self-certify compliance, and only random checks would be carried out in such cases.

FOREIGN FUNDING FOR STARTUPS

Foreign investment into India is governed by FEMA, the rules and regulations made by RBI, and the Industrial Policy and Procedures issued by the Ministry of Commerce and Industry through the Secretariat for Industrial Assistance, Department of Industrial policy and promotion (DIPP). While the DIPP issues policy guidelines and press notes/releases from time to time regarding foreign investment into India, it also issues a consolidated policy on an annual basis. Currently, foreign investment is regulated by the Consolidated FDI Policy of 2017 read with the press notes released thereafter.

Foreign investments in India may happen through one of two routes. They may happen under the **Automatic Route**, which does not require prior approval from the Reserve Bank of India (RBI) or the Central Government. Under this route, FDI up to 100% is allowed without express Central Government or RBI permission.

The other route of investment is through the **Approval Route**, which requires prior approval of the RBI or Central Government via a single window - Foreign Investment Facilitation Portal (FIFB) administered by the DIPP. The application is then forwarded to the respective ministry, which will approve/reject the application in consultation with the Department for Promotion of Industry and Internal Trade (DPIIT). Thereafter, DPIIT will issue the Standard Operating Procedure (SOP) for processing of applications under the existing FDI policy.



Apart from 18 specified sectors where Government approval is mandatory, applications where there is a doubt over the application shall be considered by DIPP which has the responsibility of identifying who can be considered. The Central Government has notified certain sectors wherein foreign investment is completely prohibited. They are:

1. Lottery business including Government or private lottery, online lotteries, etc.
2. Gambling and betting including casinos, etc.
3. Chit funds.
4. Nidhi Company.
5. Trading in Transferable Development Rights.
6. Real estate business or construction of farm houses ('real estate business shall not include development of townships, construction of residential or commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014.)
7. Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
8. Activities or sectors not open to private sector investment e.g. (i) atomic energy and (ii) railway operations.
9. Foreign technology collaborations in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

INBOUND INVESTMENT ROUTES

Various categories of foreign investors can hold stakes in Indian entities (company, partnership firms, proprietary concerns, LLPs etc.) subject to conditions and sectoral caps on ownerships. Some of the main inbound investment routes are given as follows:

1. **FDI:** FDI means the investment made by a person resident outside India through capital instruments such as equity shares, debentures, preference shares and share warrants issued by the Indian company) in an unlisted Indian company; or in 10 percent or more of the fully diluted equity paid-up share capital of a listed Indian company.

2. **Foreign Portfolio Investment (FPI):** Broadly, an FPI is a foreign entity that seeks to have a portfolio investment in India without any managerial power. The maximum individual investment by an FPI under the FPI regulations is 10%. However, the aggregate limit of all FPI put together is 74% provided a special resolution is passed if such investment goes beyond 24%. If this limit of 10% is crossed, the FPI must rectify the same within 5 days. If it does not rectify this, it can inform RBI about his exceeded limit within 7 days and will be treated as an FDI. However, Portfolio investments can only be made in listed equities and other securities.
3. **Foreign Venture Capital Investors (FVCIs):** Foreign investment in securities issued by an unlisted Indian company in ten specified sectors. The FVCI Regulations make it mandatory for an offshore fund to register itself with SEBI if such fund intends to avail of benefits under the FVCI regime. FVCIs are on the receiving end of multiple benefits such as free pricing, exemption from lock-in requirements, broader list of eligible sectors etc.

FOREIGN FUNDING IN STARTUPS

Under Indian regulations, an entity shall be considered a ‘start-up’:

1. Up to five years from the date of its incorporation/registration; and
2. If its turnover for any of the financial years has not exceeded Rupees 25 crore; and
3. If it is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

However, an entity formed by splitting up or reconstruction of a business already in existence will not be considered a start-up. Furthermore, in order to obtain tax benefits a start-up shall be required to obtain a certificate of an eligible business from the Inter -Ministerial Board of Certification.

FVCI Route

According to the consolidated FDI Policy released in 2017 by DIPP, start-ups can raise up to 100% funds from registered FVCIs under the automatic route. FVCIs may invest in equity or debt instruments issued by an Indian start-up irrespective of the sector in which the start-up is engaged, against the receipt of foreign remittance. However, if the investment is in equity instruments, then sectoral caps, entry routes and attendant conditions will apply to the transaction.

A foreign investor (other than an entity incorporated in Pakistan or Bangladesh) may also subscribe to convertible notes issued by Indian start-ups for a minimum of Rupees 25 lakhs in a single tranche. An NRI/OCI may also acquire such convertible notes on non-repatriation basis. Further, a foreign investor may acquire or transfer by way of sale, convertible notes to or from a person resident in or outside India, provided the transfer takes place in accordance with the entry routes and pricing guidelines prescribed for capital instruments.

External Commercial Borrowing Route

RBI also released the new External Commercial Borrowing (ECB) Policy in January 2019 which expressly allowed start-ups to avail ECBs from foreign investors. ECB is a loan, debt, or borrowing taken by an eligible entity in India for commercial purposes from any recognized entity outside India. The ECB Policy stated that the minimum average maturity period of the borrowing should be 3 years. It also states that the ECB may be in the form of a loan, non-convertible, optionally convertible or partially convertible preference shares. Lastly, start-ups are allowed to raise only USD 3 million annually through this route, and may be in Indian Rupee, a foreign currency or a combination of both. The ECB Policy includes further conditions that are imposed on start-ups while availing this route.

FOREIGN FUNDING IN THE MEDICAL SECTOR

India has a liberal policy on foreign investment in the medical sector. Currently, FDI is permitted up to 100 percent under the automatic route in the hospital sector and in the manufacture of medical devices. In the pharmaceutical sector, FDI is permitted up to 100 % in greenfield projects and 74% in brownfield projects under the automatic route. FDI beyond 74% in

brownfield projects requires prior approval of the Central Government or RBI. The Central Government may incorporate conditions for FDI in brownfield cases above 74%, at the time of granting approval.

Greenfield projects are new projects in India while brownfield projects refer to existing projects in India. In the insurance sector, which is an emerging component of healthcare services, foreign investment is allowed up to 26 percent under the automatic route. Investments beyond 26 per cent and up to 49 percent require prior government approval.



DATA PRIVACY

As of now, there is no separate legislation dedicated to Data Protection or Privacy. However, the data of a person is protected can be protected by the following:

1. Information Technology Act, 2000 (“Act”)
2. Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (“Rules”)

By reading these two together, following can be deduced about the Data Protection Norms that the Start-Ups have to keep in mind:

1. The Act makes it mandatory for every company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities, to protect the sensitive personal data of a person, by taking reasonable security measures. Failure to do so will attract civil and criminal liability.

Here, personal sensitive data means:

- (i) Password
- (ii) Financial information such as Bank account or credit card or debit card or other payment instrument details
- (iii) Physical, physiological and mental health condition
- (iv) Sexual orientation
- (v) Medical records and history
- (vi) Biometric information
- (vii) Any detail relating to the above clauses as provided to body corporate for providing service
- (viii) Any of the information received under above clauses by the body corporate for processing, stored or processed under lawful contract or otherwise.

And, reasonable security measures mean: security practices and procedures designed to protect such information from unauthorized access, damage, use, modification, disclosure or impairment, as may be specified in an agreement between the parties or as may be specified in any law for the time being in force and in the absence of such agreement or any law, such reasonable security practices and procedures.

2. Rules make it mandatory for the Start-Ups to provide its policy for privacy and disclosures, and this policy shall be made available to its customers. This policy shall include:
 - (i) Clear and easily accessible statements of its practices and policies
 - (ii) Type of personal or sensitive personal data or information
 - (iii) Purpose of collection and usage of such information
 - (iv) Disclosure of information including sensitive personal data or information
 - (v) Reasonable security practices and procedures
3. The consent of the customer should be taken before collecting the data. Also, data should not be collected unless:
 - (i) The information is collected for a lawful purpose connected with a function or activity of the body corporate or any person on its behalf
 - (ii) The collection of the sensitive personal data or information is considered necessary for that purpose.
4. The customer who is giving his data, shall have the knowledge of:
 - (i) The fact that the information is being collected
 - (ii) The purpose for which the information is being collected
 - (iii) The intended recipients of the information
 - (iv) The name and address of the agency that is collecting the information and the agency that will retain the information.
5. The Start-Up shall not retain the data for longer than it is required for the purpose for which it is collected.
6. The start-up has to allow the customer to review the data submitted by him/her.
7. The customer before he gives his data shall provide with an option to not to provide such data. In a case where the customer denies data requested, the start-up shall have the option to refuse to give the services. Also, the data once submitted by the customers, on his demand, shall be deleted by the start-up. In such cases, the start-up can stop providing the services.
8. Before disclosing the data of a customer to a third party, his prior permission shall be taken.
9. The data of a customer can be transferred to any other company, if he consents to it.

INTELLECTUAL PROPERTY RIGHTS FOR STARTUPS

1. What is the importance of Intellectual Property Rights for Startup Ventures?

- A. Intellectual Property Rights (IP Rights) are like any other property rights which are intangible in nature. The IP Rights usually give the creator an exclusive right over the use of his/her creation for a certain period of time. Every startup has Intellectual Property Rights, which it needs to understand and protect for excelling in its business. Every Startup uses trade name, brand, logo, advertisements, inventions, designs, products, or a website, in which it possesses valuable Intellectual Property Rights. While starting any venture, the Startup also needs to confirm that it is not in violation of the Intellectual Property Rights of any other person to save itself from unwarranted litigation or legal action which can hamper its business activities.

2. State the reasons why Startups should remain proactive in developing and protecting their Intellectual Property.

- A. Startup ventures should be proactive in developing and protecting their intellectual property for many reasons like

improving the valuation of its business, to generate better goodwill, to protect its competitive advantage, to use Intellectual Property as a marketing edge and to use the Intellectual Property Rights as a potential revenue stream through licensing.

3. What are the prime areas of Intellectual Property which are of utmost importance for any Startup venture?

- A. The prime areas of intellectual property which are of utmost importance for any Startup venture are as follows:

Trademarks
Patents
Copyrights and Related Rights
Industrial Designs
Trade Secrets

4. What is a Trademark?

- A. Trademarks means any words, symbols, logos, slogans, product packaging or design that identify the goods or services from a particular source. The Trade Marks Act, 1999 provides, inter alia, for registration of marks, filing of multiclass applications, the renewable term of registration of a trademark as ten years as well as recognition of the concept of well-known marks, etc. According to the Act "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colors. Accordingly, any mark used by the Startup in the trade or business in any form, for distinguishing itself from other, can qualify as trademark.

5. What are the points which are to be considered while adopting a Trademark?

- A. Points which are to be considered while adopting a Trademark are –

A Startup needs to be cautious in selecting its trade name, brands, logos, packaging for products, domain names and any other mark which it proposes to use. A proper due diligence should be done before adopting a trademark.

The Trademark should be capable of distinguishing the goods and services of one undertaking from that of others.

While adopting any mark, the Startup should also keep in mind and ensure that the mark is not being used by any other person in India or abroad, especially if the mark is well-known. It is important to note that India recognizes the concept of the "Well-known Trademark" and the principle of "Trans-border Reputation". Examples of well-known trademarks are Google, Tata, Yahoo, Pepsi, Reliance, etc. Further, under the principle of "Trans-border Reputation", India has afforded protection to trademarks like Apple, Gillette, Whirlpool, Volvo, which despite having no physical presence in India, are protected on the basis of their trans-border reputation in India.

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6. How Trademarks can be protected in India?

A. Trademarks can be protected under the Statutory law, i.e., under the Trade Marks Act, 1999 and the Common Law, i.e., under the remedy of Passing off. If a person is using a similar mark for similar or related goods or services or is using a well-known mark, the other person can file a suit against that person for violation of the Intellectual Property rights irrespective of the fact that the trademark is registered or not. Registration of a trademark is not a pre-requisite in order to sustain a Civil or Criminal action against violation of trademarks in India. The prior adoption and use of the trademark is of utmost importance under Trademark laws. The relief which a court may usually grant in a suit for infringement or Passing off includes permanent and interim injunction, damages or account of profits, delivery of the infringing goods for destruction and cost of the legal proceedings. It is pertinent to note that infringement of a trademark is also a Cognizable Offence and Criminal proceedings can also be initiated against the Infringers.

7. What is a Patent and How it is important for startups?

A. Patent, in general parlance means, a monopoly given to the inventor on his or her invention to commercial use and exploit that invention in the market, to the exclusion of others, for a certain period. As per Section 2(1) (j) of the Patents Act, 1970, "invention" includes any new and useful;

art, process, method or manner of manufacture;
machine, apparatus or other articles;
substance produced by manufacture and includes any new and useful improvement of any of them, and an alleged invention;

The definition of the word "Invention" in the Patents Act, 1970 includes the new product as well as new process. Therefore, a patent can be applied for the "Product" as well as "Process" which is new, involving inventive step and capable of industrial application can be patented in India. The surest way a Startup can succeed against larger rivals is by patenting its inventions. Patents provide an edge to Startups by ensuring those who innovate are adequately rewarded. When a Startup patents its invention, its valuation increases and is likely to attract more investors. This is because investors are more likely to acquire a Startup whose Intellectual Property Rights are protected. Intellectual Property Rights allows a

Startup that has developed an innovative device to compete effectively against large companies after patenting its invention. If a Startup has a unique unpatented invention, larger rivals can easily copy, manufacture, and market it, effectively negating the startup's effort to create its invention. Hence, patents also protect smaller Startups against larger rivals that have far greater resources. While using any technology or invention, the Startup should check and confirm that it does not violate any patent right of the patentee. If the Startup desires to use any patented invention or technology, the Startup is required to obtain a license from the patentee.

8. How Patent Rights can be protected in India?

- A. The patent infringement proceedings can only be initiated after grant of patent in India but may include a claim retrospectively from the date of publication of the application for grant of the patent. Infringement of a patent consists of the unauthorized making, importing, using, offering for sale or selling any patented invention within the India. Under the Patents Act, 1970 only a Civil action can be initiated in a Court of Law. Like trademarks, the relief which a court may usually grant in a suit for infringement of patent includes permanent and interim injunction, damages or account of profits, delivery of the infringing goods for destruction and cost of the legal proceedings.

9. What is a Copyright?

- A. Copyright means a legal right of an author/artist/originator to commercially exploit his original work which has been expressed in a tangible form and prevents such work from being copied or reproduced without his/her consent. Under the Copyright Act, 1957, the term "work", in which copyright subsists, includes an artistic work comprising a painting, a sculpture, a drawing (including a diagram, a map, a chart or plan), an engraving, a photograph, a work of architecture or artistic craftsmanship, dramatic work (recitation, choreographic work), literary work (including computer programmes, tables, compilations and computer databases), musical work (including music as well as graphical notations), sound recording and cinematographic film. In the case of original literary, dramatic, musical and artistic works, the duration of copyright is the lifetime of the author or artist, and 60 years counted from the year following the death of the author and in the case of cinematograph films, sound recordings, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organizations are protected for a period of 60 years which is counted from the year following the date of first publication. In India, the registration of copyright is not mandatory as the registration is treated as mere recordal of a fact. But it is advisable to register the copyright as the Copyright registration certificate is accepted as a "proof of ownership" in courts and by police authorities, and acted upon smoothly by them.

10. How Copyrights can be protected in India?

A. Whenever any person uses the original work of the other person without obtaining license from the owner, infringes the Copyright of the owner. The law of Copyright in India not only provides for Civil remedies in the form of permanent injunction, damages or accounts of profits, delivery of the infringing material for destruction and cost of the legal proceedings, etc, but also makes instances of infringement of copyright, a Cognizable Offence punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, with a fine which shall not be less than Rs. 50,000 but may extend to Rs. 2,00,000. For the second and subsequent offences, there are provisions for enhanced fine and punishment under the Copyright Act. The Copyright Act, 1957 gives power to the police authorities to register the Complaint (First Information Report, i.e., FIR) and act on its own to arrest the accused, search the premises of the accused and seize the infringing material without any intervention of the Court.

11. What is meant by Industrial Designs?

A. As per the definition given under Section 2(d) of the Designs Act, 2000, "design" means only the features of shape configuration patterns or ornament applied to any article by any industrial process or means whether manual mechanical or chemical separate or combined which in the finished article appeal to and are judged solely by the eye. However, "design" does not include any mode or principle of construction or anything which is in substance a mere mechanical device and does not include any trademark as defined under the Trade Marks Act, 1999 or any artistic work as defined under the Copyright Act, 1957. The total period of validity of registration of an Industrial Design under the Designs Act, 2000 is 15 years. Features of shape, configuration, pattern, ornament or composition of lines or colors applied to any article, whether in two dimensional or three dimensional or in both forms, can be registered under the Designs Act, 2000. However, functionality aspects of a design are not protected under the Designs Act, 2000, as the same are subject matter of patents.

12. What remedies are available against infringement of Design?

A. The Designs Act, 2000, only provides for Civil remedies. Besides injunction, monetary compensation is recoverable by the proprietor of the design either as contract debt or damages. An action for infringement of design can only be initiated after the registration of the design, however, an action for Passing-off is maintainable in case of unregistered design.

13. What is meant by Trade Secrets and How can it be protected in India?

A. Trade Secrets includes any confidential business information which provides an enterprise a competitive edge over others. Trade secrets encompass manufacturing or industrial secrets and commercial secrets, formula, practice, process, design, instrument, pattern, commercial method, or compilation of information which is not generally known or reasonably ascertainable by others. The unauthorized use of such information by persons other than the holder is regarded as an unfair practice and a violation of the Trade Secret. There are no specific statutes under the Indian Law for the protection of Trade Secrets and the same are protectable under the Common Law rights. In India, a person can be made contractually bound to not disclose any information that is revealed to him/her in confidence. The Indian courts have upheld a restrictive clause in a Technology Transfer Agreement, which imposes negative covenants on licensee not to disclose or use the information received under the agreement for any purpose other than that agreed in the said Agreement.

14. What are the mistakes made by Startups pertaining to Intellectual Property?

A. Following mistakes are usually made by Startups –

"do-it-yourself" approach towards Intellectual Property: This approach is like a silent killer for startups. Due to shortage of funds and at times due to infancy the promoters or founders do take up on the tasks related to Intellectual Property with little or no capability (or experience) to handle them on their own. A "do-it-yourself" approach is risky. Handling matters pertaining to Intellectual Property Rights require a skillful and appropriate guidance of a qualified Intellectual Property Counsel.

Experienced entrepreneurs usually understand the importance of such guidance and anticipate their IP needs. But for young, less experienced companies, it can be a problematic thing. Startups need to engage qualified Intellectual Property Counsel to help identify needs and guide solutions. There is no excuse for not having an initial consultation with a qualified Intellectual Property Attorney. Without question, such a consultation will help lay the groundwork for the Intellectual Property Rights the Startup may have (or seek). At the very least, it will equip the company with an understanding of what it needs to do so it can plan accordingly.

Improper document foundation: This problem plagues most Startups, for a variety of reasons. Failing to keep company documents in order is dangerous. And when it comes to Intellectual Property, it can be fatal. At times these startups also use standard form (Pro Forma) of contracts and agreements without amending or changing them according to their needs, so this creates problem in future. Consultation regarding drafting of agreement etc should be taken.

Ignoring standard Intellectual Property practices in the race to market: This is one of the most dangerous mistakes a Startup can make. As outlined, Intellectual Property Rights protect different things and, in some cases, cannot be acquired unless specific steps are taken. For example, a Startup cannot benefit from protection of its trade secrets unless it takes specific steps to protect the secrecy of such information.

Where trademarks are concerned, at the very least, Startups need to ensure they have performed a trademark search to see if their proposed mark is already being used by (or is confusingly similar to) that of another company. Often, such practices are standard operating procedure, but for many Startups, the founders ignore these practices in the beginning, either because they do not know or because they are too busy moving forward with product or service launch.

Ignoring standard Intellectual Property practice is never a good solution, and usually results in limited (or even eliminated) Intellectual Property rights.

Failing to implement appropriate confidentiality controls: This is a recurring issue. As outlined, although most Startups use some form of Non Disclosure agreement of standard format without taking into consideration their actual needs. Due to this inconsistent use of appropriate documentation results in failure to initiate (or enforce) controls. For example, a technology startup may inadvertently disclose confidential information to a contract developer without a signed Non Disclosure Agreement in place. The results of ignoring such reasonable controls are almost always painful.

Failure to create and implement an IP strategy: The failure to develop (or execute on) a well-thought-out Intellectual Property Strategy often proves fatal to Startups. This is the biggest mistake Startups make. Young companies commonly develop all kinds of plans – business plans to obtain investment capital, marketing plans, recruitment plans and even search engine optimization

strategies – but then why they ignore to address the plan for some of their company's most valuable assets i.e intellectual property. A number of reasons come to mind, but the most common one is their zeal to get to the market. In their haste to commercialize their product, most Startups don't take the necessary steps to identify and protect their Intellectual Property Assets. A piecemeal approach to Intellectual Property protection almost always costs far more than anticipated. Startups should always take the time up-front with qualified Intellectual Property Counsel to outline their existing and anticipated Intellectual Property Assets and to develop a plan of action to acquire and protect them. In so doing, a company can reap significant value from the Intellectual Property assets it creates and can shield itself from potential exposure to third-party infringement. So, the above mistakes could be avoided if help and guidance of a qualified Intellectual Property Counsel is taken.

15. How lawyers can help in the protection and exploitation of Intellectual Property Rights for Startups?

- A. Lawyers can help in the following manner for the protection and exploitation of Intellectual Property Rights for startups –

Lawyers can guide Startups to make Intellectual Property Rights protection a priority: Startups cannot afford the complete protection available under the Intellectual Property regime. The first step for any Startup is to evaluate and prioritize the Intellectual Property Rights involved in its business and for this help of a lawyer could be taken. Depending upon the type of industry involved, Intellectual Property Rights play an important role. Failure to identify or prioritize Intellectual Property Rights, is likely to create problems for Startup's business, especially during negotiations with future investors or at times of exiting its business. Sometimes Intellectual Property Rights are the only asset available with a startup. So the guidance of Intellectual Property Counsel is very much crucial.

For Registration of Intellectual Property Rights: It is important to note that certain Intellectual Property Rights like Patents and Designs are required to be registered before claiming any protection under the respective Statutes. On the other hand, certain Intellectual Protection Rights like Trademark and Copyright does not require registration for protection. Nevertheless, a registered Intellectual Property Right carries a greater value and acts as evidence of use of the IP Rights before courts as well as enforcement agencies. So a Lawyer can help and guide in the registration of the above Intellectual Property.

For Due Diligence of Intellectual Property Rights: For any startup, it is indispensable that it does not violate Intellectual Property Rights of any other person. This will ensure safety from unwarranted litigation or legal action which can hinder its business activities. This makes it even more important for Startups to make careful Intellectual Property decisions in the initial phase and conduct proper due diligence of Intellectual Property Rights, which it is using or intends to use and for this guidance and help of a lawyer should be taken.

For Implementing clear and effective policies and strategies for protection of IP Rights: It is in the long term interest of Startups to have an Intellectual Property Policy for management of various Intellectual Property rights which may be presently owned, created or acquired in future by Startups. The aim of such a policy is to ensure that there is no inter-se dispute between the promoters of the Startups, which remains till date to be one of the main concerns for failure of Startups. So for drafting such policies guidance of Intellectual Property Lawyer is required.

Agreements related to Intellectual Property: It is pertinent to note that having proper documentation in the form of agreements like non-disclosure agreements, agreements with employees or independent contractors, can make all the difference between the success and failure of Startups. Usually, Intellectual Property is created either by the founders or some key employee or a third party. The Intellectual Property so created, must be protected through a proper agreement between the founder or key employee or a third party, as the case may be and the Startup. If the agreement, with founders or employees or a third party, under which a novel idea was/is created, is overlooked, it could create problems later after such idea becomes successful. Accordingly, the Startups need to ensure that anything created on behalf of the Startup, belongs to the Startup and not the Employee or a third party. Further, it is advisable to enter into elaborate assignments, licensing or user agreements, and care should be taken to make provisions for all post termination Intellectual Property Right issues. So for all the above things the guidance and help of the Intellectual Property Counsel should be taken.

MSME Business India Forum

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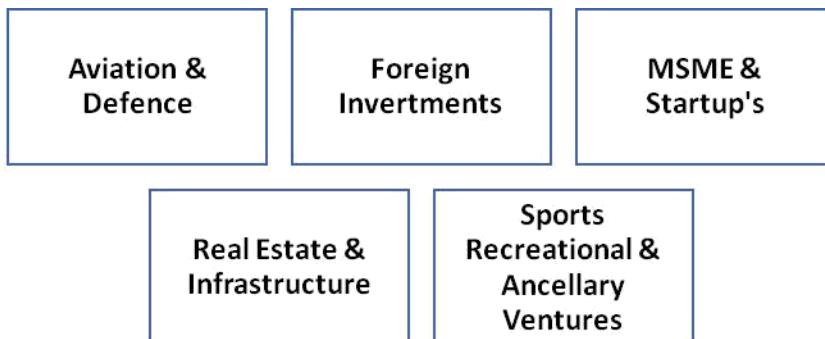
UNLOCKING THE POTENTIAL OF THE INDIAN MSME

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- 42.5 Million Enterprises
- 11.7 Million GST Registrations
- 4.8 Million Udyog Aadhar Registrations
- 6000 Products
- 92% Share in Employment
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- 45% Share in Manufacturing
- 8% Contribution to National GDP
- 2nd Largest Employment Generator
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Thank You ...!!!