



PXV LAW PARTNERS

START UP BUSINESSES/ SME'S: LEGAL ASPECTS

1. INTRODUCTION

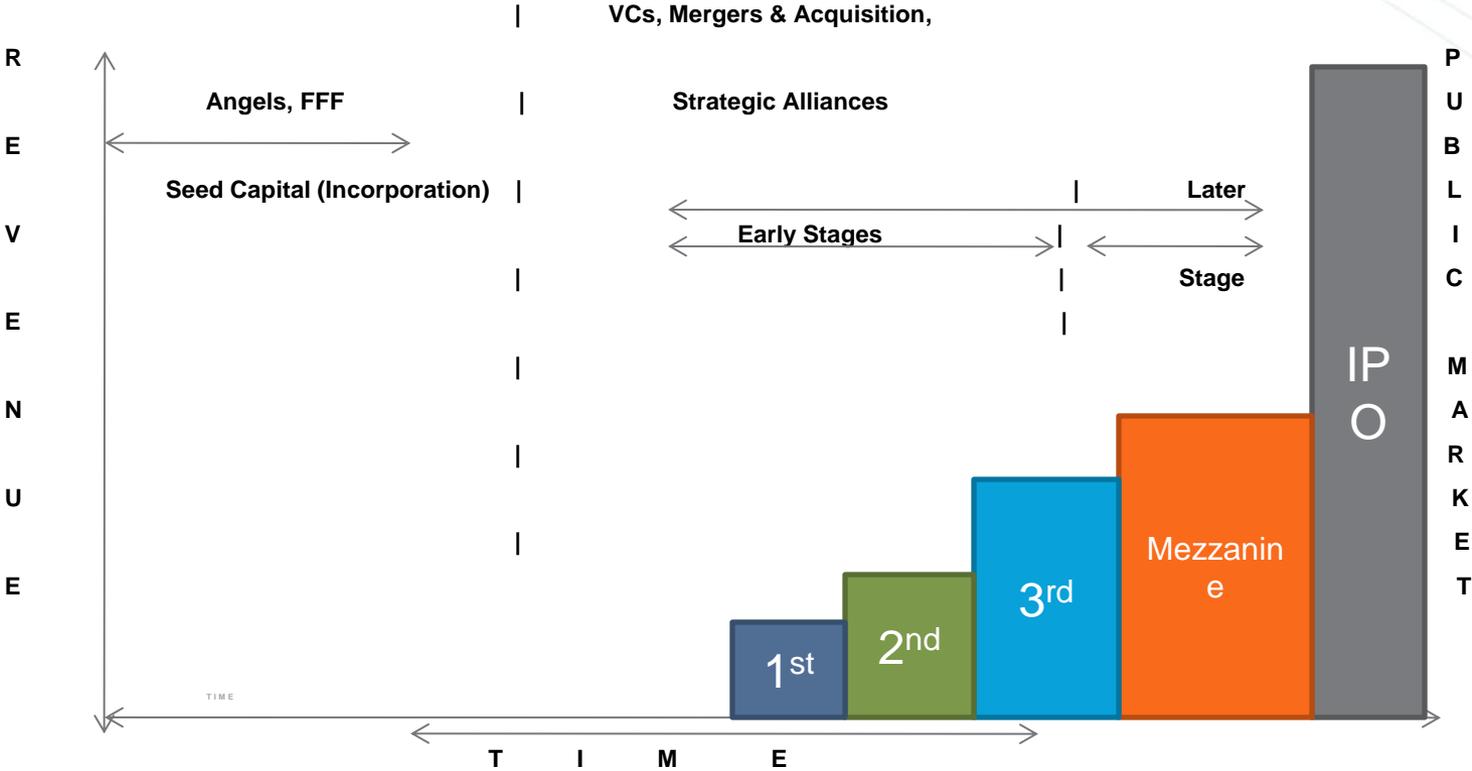
This is an exciting phase in India for the startups and SMEs ventures. A talented and entrepreneurial young population, a huge domestic market and the IT revolution has seen a rapid growth in new business ventures, especially in the service sector.

“Employing close to 40% of India's workforce and contributing 45% to India's manufacturing output. The country's 1.3 million SMEs account for 40% of India's total exports....”

Although they employ 40% of India's workforce, they only contribute 17% to the Indian GDP. Why? Too many firms stay small, unregistered and un-incorporated in the unorganised sector so that they can avoid taxes and regulations....”

- The Economic Times, 9 June 2013

2. HOW A START UP DEVELOPS



2.1 **Early stage**

- (i) Assistance in ensuring compliance with HR/employment laws – drafting and finalizing employment contracts, employee's stock-option schemes, etc.
- (ii) Assistance in conducting board and shareholder meetings.
- (iii) Drafting and finalizing basic investment documentation.

2.2 **Later Stage**

- (i) Keeping the company ready for investments - ensuring compliance with relevant legislations.
- (ii) Negotiating and finalizing share subscription and other investment agreements.
- (iii) Preparing the company for IPO.

2.3 **Future Stages**

- (i) Completion of necessary filings and procedures for IPO.
- (ii) Litigation support.
- (iii) Continuous legal support.

3. POSSIBLE STRUCTURES

3.1 Sole Proprietorship

Simplest, cheapest and most common form for starting a business. However, the owner has unlimited liability.

3.2 Partnership

A partnership is a form of business entity formed by an agreement between two or more people to own and run the business. These firms can have a minimum of 2 and maximum of 20 partners. The life of the partnership is determined by the agreement, but can also cease to exist on the death or withdrawal of partnership by any partner.

3.3 Limited Liability Partnership (LLP)

Here, the liability of the partners is limited in regard to any errors, omissions, incompetence or negligence of the LLPs employees or any other agents. There is no restriction on the number of partners. Any two or more persons can create an LLP as long as their intention is to profit from the venture.

3.4 One-person Company (OPC)

This concept has been introduced by the Companies Act, 2013. A OPC has been classified as a Private Company for all the legal purposes with only one member and director. The advantages of an OPC can only be obtained by those Indian citizens who are also residents of India. At the same, it shall also be worth mentioning that a person cannot form more than 5 OPC's. Minimum paid-up capital requirement of INR 1 Lakh.

3.5 Private Limited Company

Minimum paid up capital at the time of incorporation of a private limited company: INR 1,00,000.

Minimum of two and a maximum of 50 members as its shareholders, as well as a minimum of two directors and maximum of 15 directors. However, the limit on the number of shareholders of a private limited company has been increased from 50 to 200. This will help the startups to raise more investment without requiring it to convert into a public limited company.

3.6 Public Limited Company

The minimum paid up capital is INR 5,00,000 and the company must have a minimum of seven shareholders and a minimum of three directors and maximum of 15 directors.

4. LEGAL REQUIREMENTS

4.1 General registrations & licenses

- (a) Under Companies Act 2013
- (b) Trade license
- (c) Shops & Establishments License
- (d) Industrial license
- (e) Import/ Export License- Import Export Code

4.2 Labour Licenses

- (a) Factories Act, Contract Labour Act, Apprenticeship Act, etc.
- (b) Payment of Wages Act, Minimum Wages Act, Payment of Bonus Act.
- (c) Employees' Provident Fund Act, Payment of Gratuity Act, Employees' State Insurance Act, etc. (Depending on the number of workmen).
- (d) Sexual Harassment Act

4.3 Environment Licenses

- (a) Consent to Establish / Consent to Operate
- (b) Adherence to other requirements under Environment (Protection) Act, Air Act, Water Act, Noise Pollution Act, etc.

4.4 Tax Licenses

- (a) Service Tax Registration
- (b) PAN Card
- (c) TAN (Tax Collection & Deduction Account Number)
- (d) VAT/ CST Registration
- (e) Central Excise License
- (f) Professional Tax

4.5 Intellectual Property

If the Company wishes to protect its IP rights over a unique product/ sign, etc, it may apply to the concerned registry in the prescribed form. Intellectual property can be registered or unregistered. Common types of intellectual property include:

(a) Copyright - this protects written or published works such as books, songs, films, computer software, web content and artistic works;

(b) Patents - this protects commercial inventions, eg a new business product or process;

(c) Designs - this protects designs, such as drawings or computer models;

(d) Trade marks - this protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

5. AGREEMENTS & POLICIES

5.1 Shareholders Agreement

A shareholders' agreement typically grants rights to shareholders who are party to the agreement that are above and beyond the rights that are inherent in the shares that they own, and is intended to ensure that those shareholders obtain the benefits of the additional rights that they bargained for when making their investments.

5.2 Employment/ Retainer Contracts

There is no particular requirement under any centrally enacted labour laws to have written employment contracts. However, the importance of a properly executed employment contracts with employees, specifying the conditions of their employment, termination clauses, etc. cannot be overemphasized.

5.3 Non-disclosure / non-compete / confidentiality Agreements

Confidentiality undertaking regarding the business of the company, etc. can be used to set up a potential business relationship without risking the loss of trade secrets, confidential knowledge or information of the company.

5.4 Supplier Agreements

The company may enter into supply agreements with regard to inputs or goods that may be required to be used in the business or for manufacture, etc.

5.5 Licensing Agreements

The Company may require licensing agreements with regard to the use of a software / content that belongs to any other person than the Company.

5.6 Contractor Agreements

If the company requires that contract employees be hired, it is required to enter into contractor agreements for the same.

5.7 Service Agreements

If the Company requires services from other companies or any other entity, it is required to enter into a service agreement with such a party.

5.8 Internal Policies

- (i) HR policy*
- (ii) Sexual Harassment policy*
- (iii) Equal opportunities / Non-discrimination policy*
- (iv) Whistleblower policy*

5.9 Online contents – legal safeguards

- (i) Terms and conditions on website*
- (ii) Privacy policy*
- (iii) Disclaimers*

Thank You

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