



Entrepreneur Law Guide

A brief introduction on Indian Laws for entrepreneurs

India seems to be stealing the United States maiden title of 'the land of opportunity'. The treasures of raw material and easy availability of cheap skilled and unskilled manpower, serve as an impetus to the ongoing industrial boom. India's leading and inspiring corporate figures, fuel the entrepreneurship enthusiasm of many young Indians, who dream of becoming corporate gems. The stories of overnight turn around of one's fate because of fantastic fortunes created in business ventures continue to pop up in national dailies. What India witnesses today is nothing but a rapid increase in the number of entrepreneurs who are driving India Inc. towards the dream of being 'a developed country by the year 2020'.

This entrepreneur guide would provide you with the much needed information on the various legal aspects of running a business. This guide would:

- ✓ Give you an understanding of the law applying to business.
- ✓ Supplement and give you a better understanding of the advices you receive from your professional advisors.
- ✓ Enables you to give clearer instructions to your professional advisors.
- ✓ Enables you to discuss and understand fully, the legal implications of all transactions.
- ✓ Ensure that you maximize your use of professional advisors.

In business, the most important thing is to take the right decision at the right time. It includes the decision to decide the nature of the business entity that would serve the best interest of the promoters as well as the society. Almost all entrepreneurial as well as managerial decisions have their market and legal implications. So, as a successful entrepreneur you need to be careful and conscious right from the beginning.



Initial brainstorming

Indian laws recognise a variety of models through which one can run his/her profession, operate business or establish a business empire. Sole proprietary, a partnership firm or a company, any one of these can be your choice, to efficiently accomplish your business goals within India. Each one of these has its pros and cons. They have different liability structures and they oblige you with different requirements of statutory compliances.

Few factors which need to be considered thoroughly by a business beginner while deciding the right business/legal entity are:

Liability - Accountability counts more in the eyes of law. Those in control are always accountable for the acts and consequences. The different entities under the prevailing legal regime, the level and the risk of accountability through which the liabilities imposed are quite different. In a partnership, the partners of the firm have unlimited liability, i.e., if the assets of the firm are not adequate to pay the liabilities of the firm, the creditors can force the individual partners to make good the deficit from their personal assets. The liability of the members of a company is limited, but it is also possible to incorporate an unlimited company. In a company limited by shares, a member is liable to pay only the uncalled money due on the shares held by him when called upon to pay and nothing more, even if liabilities of the company far exceeds its assets. In a company limited by guarantee, the liability of the members is limited to such amount that they undertake to pay in the event of liquidation of the company. So, the liability arises only when the company has gone into liquidation and not when it is a going concern.

Size of the business - If it is anticipated that ownership of the business will increase in size, then a company may be the preferred vehicle because its structure easily facilitates widening of the ownership base, which in turn can permit third party investment, employee share option schemes or the possibility of raising Business Expansion Scheme finance.

Management - Sole traders clearly manage the business themselves and partners are generally entitled to take part in the management of the partnership. In contrast, shareholders are not entitled to take part in the management of the company, unless they are directors. This would not be a problem for a small concern where usually all shareholders are directors, but



it is important to be aware that, if you are not a director, then you will not be involved in the running of the company.

Separate Legal Entity - A company is a separate legal entity from its members. It has its own assets and liabilities distinct from those of the members, and is capable of owning property, incurring debt, entering into contracts, suing and being sued separately. Even though there is no actual physical presence, it acts through its board of directors to carry out its activities under the name and seal of the company. On the other hand, the property of a partnership firm belongs to the partners as the firm does not have any separate legal existence distinct or separate from its partners.

Perpetual Succession - A company does not die or cease to exist unless specifically wound-up. Change in the membership of a company or the death or insolvency of any member of the company does not affect the life of the company as a separate entity. This quality ensures that the company survives even in the event of a change in ownership of its shares. On the death of a partner, the partnership is dissolved unless there is a provision to the contrary by agreement between the partners.

Other factors like prevalent tax regime, availability of necessary funding (**discussed later**), human resources, cultural and geographical factors are also to be considered.

Sole Proprietary - This is a one-person business run by the owner usually in his or her own name and with his or her own funds. It is possibly the most common business structure and examples of its use include farmers, shopkeepers and small manufacturers. There are few legal formalities affecting the sole trader as our law permits any individual to engage in any business activity. If the business makes a profit, this profit (minus tax) belongs to the sole trader and conversely, if the business flounders, then the debts and liabilities belong to the sole trader to the extent of his/her business and private assets. A sole trader can employ others but as long as he/she alone runs the business he/she remains a sole trader. A sole trader should also register with the tax office both for income tax and VAT. It is also advisable that a sole trader opens separate bank account(s) for the purposes of the business.



Partnership - The legal definition of a partnership is found in Section 2 of the Indian Partnership Act, 1890, which describes it as “the relation, which subsists between persons carrying on business with a view of profit”. It is effectively an agreement by two or more persons to go into business together with a view of making profit. There are very few legal formalities for the formation of a partnership firm and all trades, occupations or professions can create one. A partnership can arise when the parties make an express agreement (for example, when they execute a partnership agreement), or by implication where their conduct indicates the existence of a partnership agreement. It is strongly advisable that a written partnership agreement is put in place which specifies the rights and responsibilities of all partners. In the absence of a written agreement, the provisions of the Partnership Act, 1890 are used as the basis for solving any difficulties which might subsequently arise.

A bill recognizing Limited Liability Partnerships (LLPs) is recently passed by the Indian Parliament. A noticeable feature of such partnerships is that they can have what are commonly known as “sleeping partners”, who have no power to bind the firm but contribute a specified amount in money or money’s worth and enjoy immunity from liability beyond this amount.

Company- A limited company is similar to a partnership with one fundamental difference – an incorporated company is an entity distinct or separate from its members. As a separate legal body, the limited company can own property, issue legal proceedings and be sued, make contracts, etc, just like any other person. However, an incorporated company is a legal creation and, as such, its powers are also controlled and regulated by law. As the private company with limited liability is the most appropriate to most small businesses, it is the formation of such a company which will now be outlined. The normal method of incorporation is by registration under

Forms of Limited Liability

There are 2 forms of limited liability, namely:

- Where the liability of members is limited to the amount, if any, unpaid in the shares respectively held by them, known as a company limited by shares, generally referred to as a limited company.
- Where the liability of members is limited to the amount, which the members undertake to contribute should the company be wound up, known as a company limited by guarantee. As the latter form is usually only used by non-profit concerns, you will see that the former is more appropriate for a profitable business venture



the Companies Act.

Incorporation

The Companies Act of 1956 sets down rules for the establishment of both "Public" and "Private" companies. Private companies are formed between 2 (minimum) to 50 (maximum) members and it prohibits invitation to public for capital issues. Many provisions of the Companies Act are not applicable to Private Limited companies. The minimum paid up capital at the time of incorporation of a Private Limited company has to be Rs 1,00,000. There is no upper limit on the amount of capital. It can be increased any time, by payment of additional stamp duty and registration fee.

Procedure for name approval -The first step to establish a company, is to apply for a name. For this purpose, an application in Form No. 1A needs to be filed with the Registrar of Companies (ROC) of the state in which the Registered Office of the proposed Company is to be situated. A fee of Rs. 500 (around US\$ 11) has to be paid for the same. After the receipt of application along with the fees, the name is checked for availability, if it is available then it is allotted to and it remains valid for a period of 6 months. In this time frame, you can complete the other formalities of incorporation. The approval takes 3-7days.

Preparation of Memorandum (MOA) and Articles of Association (AOA)

-The MOA and the AOA are required to be drafted. The MOA states the main and other objects of the proposed company. The AOA contains the rules and procedures for the routine conduct of the proposed company. It also states the authorized share capital of the proposed company and the names of its first directors.

Documents required for Company Formation The following documents are required to be filed with the Registrar of Companies (ROC) for the incorporation of the company:

- ✓ Form No. 1 - This is a declaration to be executed on a non-judicial stamp paper of INR 20 by one of the directors of the proposed company or other specified persons such as Chartered Accountants,



Advocates, etc. stating that all the requirements of the incorporation have been complied with.

- ✓ Form No. 18 - This is a form to be filed for informing ROC the registered office of the proposed company.
- ✓ Form No. 29 - Consent to act as directors - Applicable only for Public Limited Companies.
- ✓ Form No. 32 - This is a form that states the names of the proposed directors.
- ✓ Memorandum of Association(MOA) and Articles of Association (AOA)
- ✓ Name approval letter in original.
- ✓ Power of Attorney signed by all the subscribers of MOA authorizing one of the subscribers or any other person like us to act on their behalf for the purpose of incorporation and accepting the certificate of incorporation.

For more information visit the Ministry of Corporate Affairs website www.mca.gov.in

Certificate of Incorporation- After the above mentioned documents are filed, the ROC calls on a specific date to scrutinize the MOA and AOA filed. On complying with the same, the certificate of incorporation is granted.

Meetings: Shareholders' Meetings - The shareholders of a company may hold meetings to discuss and decide upon various issues concerning the company. The shareholders need to compulsorily hold an Annual General Meeting ("AGM"). The matters normally under consideration in such an AGM are annual accounts, director's reports, auditors' reports, declaration of dividend, appointment of directors, and appointment of statutory auditors. Besides the AGM, which is a statutory requirement, Extraordinary General Meetings ("EGMs") may be called to decide upon urgent business that cannot wait until the next AGM.

Procedures at Meetings; Decision Making

No meeting can be held unless a notice is given to all the persons entitled to attend the meeting, specifying the necessary information. A notice must contain the place, date and hour of meeting and must also state the agenda of the meeting.



If the Articles so authorize, a member may appoint another person to attend and vote at a meeting on his behalf. Such other person is known as a “proxy” and need not necessarily be a member of the company.

Corporate shareholders remain personally present at meetings through their authorized representatives. The articles of a company may also provide for a quorum without which a meeting will be construed to be invalid.

A *motion* means a proposal to be discussed at a meeting by the members. A resolution may be passed accepting the motion, with or without modifications, or a motion may be entirely rejected. A motion, on being passed as a resolution becomes a decision. Resolutions may be Ordinary (simple majority) or Special (seventy five percent majority).

Meetings: Directors’ Meetings-The Board of Directors of a company or committees set up by the Board for special functions may conduct meetings and pass resolutions regarding various aspects of managing the company. The convening of such meetings is normally governed by specific provisions of the Articles in this regard. Rules of notice and quorum stated above in the context of shareholders’ meetings shall apply to a Board meeting as well.

Normally, a special resolution of the Board is needed to decide on important matters of the company such as altering the memorandum or articles of association of the company. Besides this, the Articles generally provide for what matters can be decided upon by a simple resolution, and what matters may require a special resolution. In some cases, veto powers may also be granted to some Directors to decide upon certain issues. While any person can become a director, you should realize that a director has certain obligations under law and may become liable for certain acts and omissions of the company. You should obtain appropriate legal advice in this regard.

Recording the Proceedings: Every company must keep the minutes of the proceedings in the general meetings, the meetings of the Board of directors and its committees. The minutes are a record of the discussions made at the meeting and the final decisions taken during the meetings. The minutes book of the proceedings of general meetings must be kept at the registered office of the company. Any member has a right to inspect this book, free of cost during business hours at the registered office of the company. But, the minutes books of the Board meetings are not open for inspection by members.



Other records A company should have a permanent file in which all of its contracts, tax returns and other important documents are kept. This file should be organized such that it is easy to access the documents.

Why is it important to maintain books and records?

Maintenance of all the records of the company, including the Memorandum, Articles, Register of Members, contracts, minutes book, and other important documents, is of great importance. Where minutes of the proceedings of any meeting have been kept properly, they are, unless the contrary is proved, presumed to be correct, and are valid evidence that the meeting was duly called and held, and that all proceedings have actually taken place, and, in particular, all resolutions passed at the meeting shall be deemed to be valid. Besides this, other records are also important when a company wishes to obtain financing or enter into any material transactions. Bankers, potential buyers, venture capitalists etc. normally need to review certain basic documents, which should be readily accessible when required. Therefore, for perusal by potential investors, for smooth operation of the regular affairs of the company, as well as for certain regulatory reasons, it is important that these documents / records are well maintained.

Recently, the Government of India has launched its e-governance initiative in respect of companies. All directors of Indian companies are required to obtain Director Identification Numbers (“DINs”) as well as Digital Signatures. Such DINs and Digital Signatures are intended to make the process of compliance with the company law and procedures in India much easier by facilitating electronic filing of returns and other forms, online at the Registrar of Companies. Although such electronic filing processes are still being streamlined in practice, there can be little doubt that online processing of compliance filings will make life far easier for Indian companies.

Licenses

Before a business firm or company starts operation, it has to get the necessary licenses and approvals from relevant government agencies, especially for certain business activities. Such controls exist as the government has to safeguard public interests in India, particularly if the business activities impinge on areas such as health, environment, security or morality.



Banking and Accounting

A good record keeping system should be accurate, simple to use, and designed to provide information on a timely basis. The legal requirements concerning financial records specify only that there be an accurate and complete record of your daily income and expenses and at a particular point of time the previous six years records be retained.

Business owners generally open a separate business account at a bank separate from personal accounts. Ordering numbered cheques with stubs to record cheque details and obtaining a deposit book may simplify the bookkeeping process. You can arrange from your bank to mail you a statement along with your cancelled cheques every month to aid in the record keeping.

Business Insurance

Your business is unique and so is your insurance protection needs. The most common types of business insurance are property and liability insurance.

Property insurance protects the assets your business owns, including the building and equipment, from destruction or damage. Your home owner's policy may not cover business equipment and you'll need contents insurance to protect your business equipment from perils such as fire, flood, or theft. To determine how much property or contents insurance you'll need, create an itemized list of your business' assets and their individual dollar values. Then decide which assets you actually want to insure and for what value, which will determine the insurance premium and allow you to evaluate the insurance is worth paying or not.

General liability insurance protects your business from liability arising from negligence that may cause injury to others, such as a customer or employee. The legal expenses and settlement costs of a single lawsuit could drive your business into bankruptcy, therefore this kind of insurance is considered a "must-have".

As a business owner, you should also carry some kind of disability insurance. If you own a business, you are not automatically eligible for workers' compensation benefits but can buy personal coverage. When shopping for



disability insurance investigate how the policy defines a “disability” in addition to the nature of the benefit payment.

Intellectual Property rights

Intellectual Property (IP) generally refers to the product of creativity and intellectual effort. IP can be an invention or innovation, special names and images used in trade, original designs or expression of an idea. In India, laws exist to protect such IP. This may be through a registration process such as patent registration for inventions, trade marks registrations for signs used in trade, and industrial design registration for designs applied to articles. Other forms of IP, that need not be registered, but may be protected nonetheless, include copyright works, geographical indications, layout designs of integrated circuits, confidential information and trade secrets.

IP being territorial in nature would need registration in countries in which protection is desired. The laws of the foreign country would apply if an application for IP rights is sought in that country. To obtain protection outside India, it is necessary to file separate applications in the countries concerned. In order to get protection in these countries you may either file applications in those countries directly or, for certain IP, through existing international systems.

Patent -A patent is a monopoly right over an invention given by the law to patentee for a maximum period of 14 years. It serves to encourage new inventions as it allows the patentee to benefit from the commercial exploitation of the invention. In return, the patentee provides full disclosure of the invention so that the public may avail themselves of the disclosure of the information and benefit from such disclosures. Examples of inventions for which patents have been granted are the “ring pull tab for a can” and “anti theft device for a vehicle”.



Copyrights

Copyright protects art work, literary works of authors like novels, software programs, plays, sheet music and paintings. Generally, the author of a copyright work has the right to reproduce, publish, perform, communicate and adapt his work. These rights enable him to control the commercial exploitation of his work.

Trade Mark A trade mark is a sign used by any person in the course of business or trade to distinguish his goods or services from those of other traders. It can be letters, words, names, signatures, numerals, devices, brands, labels, tickets, shapes, sound, colours, aspect of packaging or any combination of these.

Registered Design-A registered design refers to features of shape, configuration, pattern or ornament applied to an article via an industrial process. It is the visual appearance of articles we see everyday. Some examples of registered designs include shapes of furniture, cutlery & toys, the pattern on fabrics etc.

Layout-designs of Integrated Circuits The layout-designs of an integrated circuit (IC) refers essentially to the 3-dimensional disposition of the elements and interconnections making up an IC. ICs are used in many products such as watches, televisions, traffic lights and computers.

Geographical Indications are indications which identify a good as originating in a place where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. Some examples of geographical indications are 'Champagne', 'Bordeaux' and 'Chianti', the first two being regions in France and the third, a region in Italy, all famous for their wines.

Registration of an Internet Domain Name

The Internet has become an essential part of most businesses and the idea of conducting all or at least part of your business through a website is an increasingly common phenomenon. Website design is a business in itself – however, all websites must have a distinct and unique domain name.



The domain name system helps users to find their way around the Internet. Every computer has a unique address and the goal of the domain name system is for any Internet user, any place in the world, to reach a specific website address by using the domain name. If you intend to use the Internet in your business, you will first need to register your domain name. Due care and promptness is all what you need here. With reference to India, you can register your domain name with many services. Most popular are Net4domains and Rediff.

FUNDING, FINANCE AND SECURITY

Money is needed to set up a business, whether it is for equipment, premises, working capital or an income while the business is being established. It is vital to ensure that adequate funds are available from the start, as insufficient funds will adversely affect the running of any business and may lead to the demise of what could have been a viable venture, if properly financed.

Angel Financing – Capital raised for a private company from independently wealthy investors. This money is generally used as seed financing, the first round of capital for a start up business. This money is used to prove a concept, develop a business plan, or pay for the initial patent filing. This money usually takes the form of a loan or an investment in preferred stock or convertible bonds.

Venture Capital (VC) Financing – An investment in a start-up business, that is thought to have excellent growth prospects but is unable to access traditional capital markets. The initial VC financing, Round A, is in a company that was previously financed by founders and/or angels. The name comes from the fact that investors receive Series A Preferred stock in the company. The normal investment range for such a round is \$2 – 5 million, though it can be larger for biopharmaceutical opportunities in particular. While some VC funds may get involved with a company at a very early stage, most prefer both a business plan and an experienced team to be in place prior to considering an investment. As the company achieves defined operational milestones and needs additional growth capital, it may seek additional funds from the VC community, Rounds B, C, D, etc. Such rounds can range from a few million dollars to in excess of \$50 million.



Mezzanine Financing – Stage of financing for a company immediately prior to an Initial Public Offering (IPO). It is available from institutions that generally won't get involved in the earlier, higher risk financings. It can be structured as preferred stock, convertible bonds (a security that can be converted to another type of security, generally common stock, at a pre-stated price) or subordinated debt (debt that has inferior liquidation privileges and therefore carries a higher interest rate).

LOANS

Most banks and financial institutions provide personal/business loans for the acquisition of goods. Once the creditor has been satisfied in relation to the borrower's Credit worthiness and security, the money is provided to the borrower/customer, who then purchases the goods in a separate transaction. The agreement normally includes a repayment schedule, with the entire debt becoming due if there is default on any one payment. Usually, the provision of credit by way of personal or business loans will include a requirement that the borrower provides security for the repayment of the debt. For instance, the bank could require the borrower to furnish a bill of exchange, which, if there is default, can be negotiated and used as a convenient method of pursuing the borrower for the amount due.

More often, the lending institution will require additional security such as a right against property, a personal right of action against or an indemnity from another person in addition to the borrower, or the assignment to the lender of a life policy.

Third party guarantee

Another method of providing security for borrowings is for the lender to require the borrower to include a third party who will become liable for the debt if the borrower fails to pay – this third party will be required to execute a guarantee. A guarantee is where a person called either the "guarantor" or the "surety" gives a collateral promise to answer for the debt, default or miscarriage of another – in a debt situation, the guarantor undertakes to pay the debt if the original borrower fails to do so. As with the original borrower, before accepting a person as guarantor, a lending institution will need to satisfy itself as to their creditworthiness and security.

The contract of guarantee must be in writing or be evidenced in writing. Once in place, it will not be activated if the borrower adheres to the agreed



repayment schedule. If, however, the borrower defaults, the lending institution can call in the guarantee and the guarantor becomes liable. In order to minimize his/her obligations, the guarantor should, where possible, ensure that the amount covered by the guarantee is clearly stated (including the possible costs and interest) and that it is for a limited time period only. It should also be noted that, if a guarantor discharges a debt when required by the lender to do so, he is entitled to pursue the borrower for the amount paid or, if there was more than one guarantor, to pursue his fellow guarantors.

Security

When a customer requires goods, they often also need credit and there are various options to get that credit. If the seller allows payment to be deferred or made by instalments and makes no provision for when ownership is to pass, the contract is a credit sale. Ownership passes to the buyer once they are in possession of the goods and, if the buyer defaults on the payments due, the seller can only pursue the buyer for the amount outstanding and cannot repossess the goods. If a seller wishes to have the option of recovery of the goods and thereby gives himself/herself security for payment, he/she can do so by stipulating that ownership is not to pass to the buyer until certain conditions are fulfilled (usually full payment). This is known as a "reservation of the title" clause and means that the seller can recover the goods until the conditions are met. Alternatively, the supplier may allow the customer to possess and use the goods in return for a rental payment, with an option for the customer to buy the goods after a specified number of payments have been made. This is known as a Hire Purchase agreement. A Hire Purchase agreement can be made between a supplier and a customer – however, quite often, a supplier will prefer payment immediately and will have arrangements for a finance company to provide the credit. In such a triangular situation, the customer negotiates with the supplier and, if the customer requires credit, the supplier requires him/her to complete an application form for the finance company. If the finance company is satisfied with the creditworthiness of the customer, it then buys the goods from the supplier and leases them on Hire Purchase to the customer (the Hire Purchase price being higher than the cash price, the difference being the profit for the finance company). The customer obtains the goods direct from the supplier and the finance company rarely sees them.

Goods can also be subject to a lien, which is a right to hold the property of another as security for the performance of an obligation, and in this case it



is the right of a creditor to retain possession until a debt has been discharged. Examples include retention of a car by a garage until the cost of the repairs has been paid, or dry cleaners retaining a customer's clothes until the bill is paid.

Companies & Finance

As with sole traders and partnerships, a limited company also requires funds to set it up in business. A company has 2 main ways of raising capital. First, in companies with a share capital, money can be raised by issuing shares in the company. A shareholder must pay the company for each share allotted to him/her and the shares that have been paid for are known as the "issued capital".

The Memorandum of Association of the company will specify the company's "nominal capital", which is the face value of the total number of shares which the company has authorised itself to issue. This does not mean that the company has issued all of these shares, but means they can do so and, by doing so, raise finance. The second way a company can raise funds is by borrowing – however, a company's capacity to borrow is determined by the objects clause in its Memorandum of Association. In the absence of an express power, a trading company is assumed to have an implied power to borrow for a purpose incidental to that trade. There are limits or restrictions on the amount the directors can borrow without the prior sanction of a General Meeting.

Loans to a company can be secured or unsecured and, similarly, lenders will generally insist on security for a loan of any size. Usually, the company will issue a "debenture", which is a deed issued by the company as evidence of a debt or security for a loan and, where a company intends to use debentures, an express power to do so is usually included in the Memorandum of Association. It is important to note that a debenture holder is not a member of a company but merely a creditor.

The company has generally two options in furnishing security, either **a fixed charge**, where the loan is charged on a specific asset of the company, or **a floating charge**, where the loan is charged on such property as the company has from time to time. A fixed charge can tie up an asset (in that it cannot be dealt with without the consent of the debenture holder). Where a floating charge is in place, the company can change assets, which will still be covered by the charge, without executing further documentation. In



addition, assets can be charged which would not be acceptable or suitable for a fixed charge – for example, debtors and stock.

A floating charge becomes a fixed charge (this is called “crystallisation”) when the company is wound up, a receiver is appointed or a lender intervenes when entitled to do so. This can be explained through an example which is – ‘when the company has defaulted on loan repayments’. Until then, the charge remains dormant or “floats” over the assets. Once a charge has been put in place, particulars of it must be registered in the Registrar of Companies within 15 days.

TAX

All businesses must be compliant with the current tax regime. To ensure compliance, you must be aware of the provisions applicable to you and make arrangements to meet those requirements.

The following is a general outline of the various matters that might affect your business, however the advice of your professional financial advisor should be taken and followed from the start.

Income Tax is payable by individuals on the annual profit or gains from your business, and any other income (for example, rental income) you might have. As a self-employed person, you are responsible for filing your own returns through the self-assessment system. The tax year begins on 1st April and ends on 31 March each year. If your annual accounts are not made up to the end of each calendar year, you will be taxed on the profits of your accounting year.

Corporation Tax is payable by a company on its profits, which will include both income and capital gains. The self assessment system also applies to companies, which means that the company is responsible for filing its own returns in respect of each accounting period. If the return is not filed in time, surcharges will be imposed, as in the case of Income Tax. In addition, however, the company’s use of allowances and reliefs will be restricted.

VAT, which stands for “Value Added Tax”, is chargeable on the supply of goods and services within India by any individual/partnership/company, etc., that supplies taxable goods and services, in excess of a specified limit, in the course or furtherance of business. It is also chargeable on the acquisition of



goods by a VAT-registered person within the respective state and goods imported into the State from any other state.

Maintaining Records- It is imperative for all businesses to maintain proper records and books of account. The nature of these records will clearly be determined by the type and size of the business – however, for all businesses, it is essential that they are accurate and as easily managed. Your accountant or professional financial advisor will advise on the system best suited to your particular business, be it a manual or a computerised system. These records will be essential in determining your tax liability. They will also be needed if you wish to evaluate your business or consider expansion (most financial institutions will seek at least 3 years' accounts when considering an application for further borrowings). In addition, all companies will need proper books of account when preparing and filing their annual returns at the ROC.

The business books and records that you keep should vouch and confirm all of the information given in your tax return. These books and records will include Sales Books, Purchases Books, Cash Books, Cheque Payment Books, Invoices, Bank statements and other supporting records, such as Diaries, Till Rolls, Cheque Stubs, and Receipts.

Contracts and Agreements

In this section, we look at how a binding contract is made and consider those types of contract that frequently arise in the course of a business. In simple terms, a contract is an agreement which the law will recognize or enforce.

However, in order for an agreement to be a contract, over time the law has laid down that certain essential elements, which must be incorporated.

Essential Elements

In summary, the criteria for establishing the existence of a contract are:

- Offer.
- Acceptance.
- Consideration.

Offer- A contract must begin with an offer. It can be made to one person or several but it must be communicated. It is very important to distinguish an "offer" from an "invitation to treat", as the former can be accepted whereas



the latter cannot. Examples of “invitations to treat” are goods in a shop window or on display, in response to which customers can make an offer.

Acceptance of an offer must be absolute and unqualified. If it is not, then the original offer is rejected and can only be reinstated if made afresh.

Consideration-This requirement means that each party must give something, or do something, for the other. It must be two-way and must be of value.

In business transactions, the consideration from one of the parties is usually money in return for either goods or services.

Other factors affecting the deal include Capacity of parties, lawful intention and purposes of the contract.

A binding contract will come about only if the parties intend there to be a binding relationship between them. This is normally presumed in commercial transactions. Both express terms (those on which the parties have specifically agreed) and implied terms (those which will be imputed, even though the parties have no specifically agreed to their inclusion or even considered them).

As you can imagine, most commercial transactions will give rise to the existence of a contract – and it is important to remember that many contracts are oral and do not need to be in writing.

Liabilities

Your business entity and/or you may land up in trouble if you breach any of the statutory or common law practice. It may vary from contractual liability to tortious liability. Different statutes fix liability as manufacturer, importer, exporter, seller and just as a stock-keeper of dangerous goods. Apart from this, dealing in hazardous substances warrants utmost care as a slightest of mistake and proven harm to others may make you absolutely liable even without your fault.



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