

Preparing the Legal Foundation for a Startup



Vineet Budhiraja



Preparing the Legal Foundation for a Startup



Broad understanding - law in general



Types of business entities – conceptual understanding



Types of business entities – one for your Startup/business



Other legal aspects in the context of Startups



Summing it all up

Law defined

body of rules of conduct
of
binding legal force and effect
which are
prescribed, recognized, and
enforced by controlling authority





Law from an understanding perspective

Law is Common Sense!!!

Ignorance of law is no excuse





Rule of Law

When Law Rules!!!

Elements of Rule of Law



supremacy of
the law

equality
before the law

accountability
to the law

fairness in the
application of
the law

separation of
powers

participation
in decision-
making

legal certainty

avoidance of
arbitrariness

procedural
and legal
transparency

Four primary sources of law in India



1. Constitution of India
2. Statutes (legislation)
3. Judicial precedents
4. Customs



Universally recognized “principles of natural justice”

Nobody shall be a judge in his own cause or in a cause in which he is interested. Also known as Doctrine of Bias

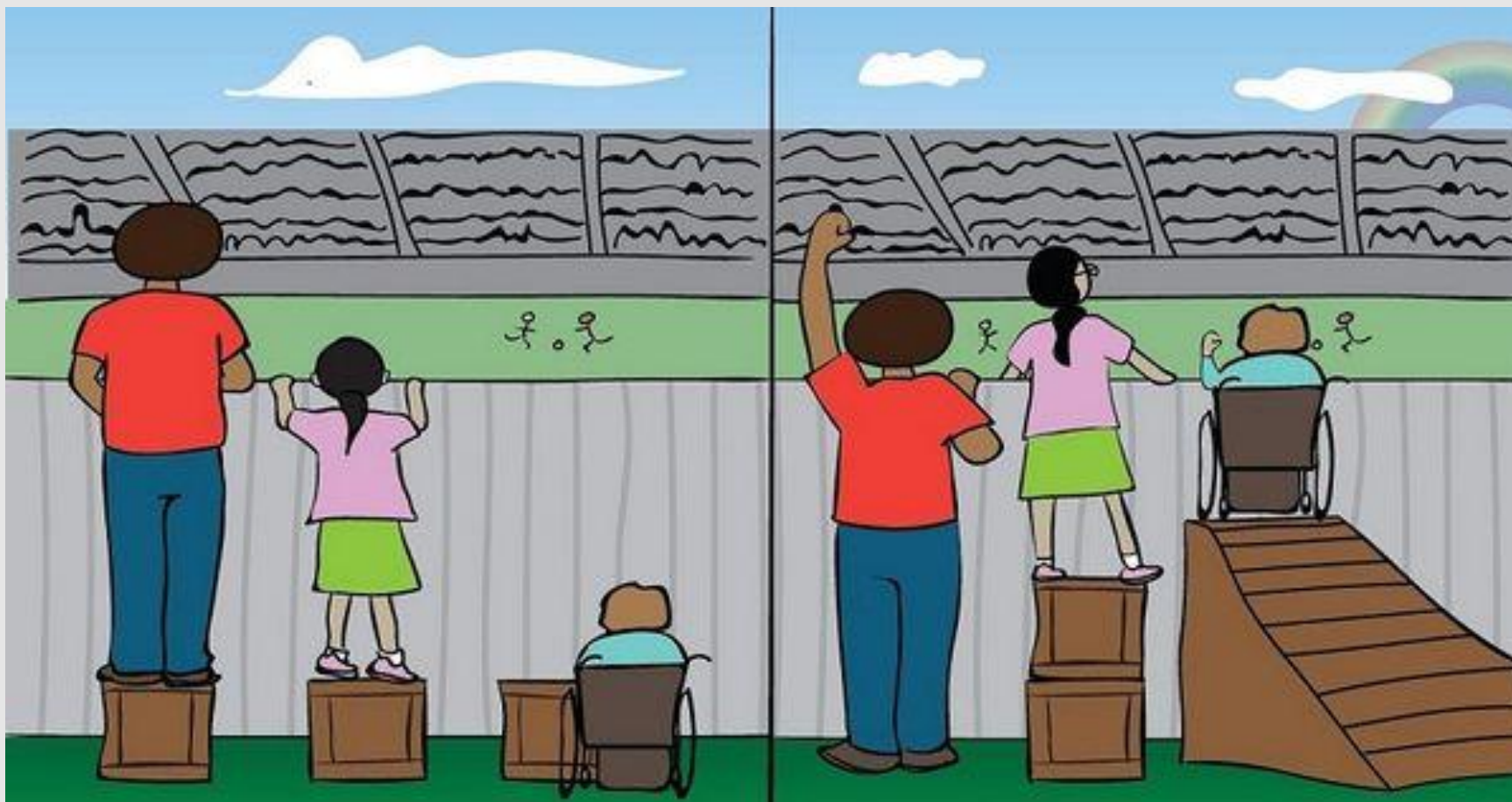
To hear the other side. Fair hearing, fair procedure

Reasoned decisions

Justice

Justice refers to the quality of being fair, which is based on equality and morality

Justice, Equity and Good Conscience








Fundamental Rights





Preparing the Legal Foundation for a Startup

-  Broad understanding - law in general
-  Types of business entities – conceptual understanding
-  Types of business entities – one for your Startup/business
-  Other legal aspects in the context of Startups
-  Summing it all up

Common Business Entity Structures

Broad Overview



SOLE
PROPRIETORSHIP



PARTNERSHIP



COMPANY

Sole Proprietorship

- *in a nutshell*

A business form owned and managed by one person who invests her/his own money and is fully responsible for consequences of all the actions/decisions

Liabilities (tax, debt...) of the firm and of the proprietor are linked

Easy to start, no registration required except GST and other business-related registrations



Partnership Firm

- *in a nutshell*

"Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. (agency relationship).

Liabilities (tax, debt...) of the firm and of the partners are linked.

Relatively easy to start, registration is optional, a partnership deed is required.



Company/Corporation

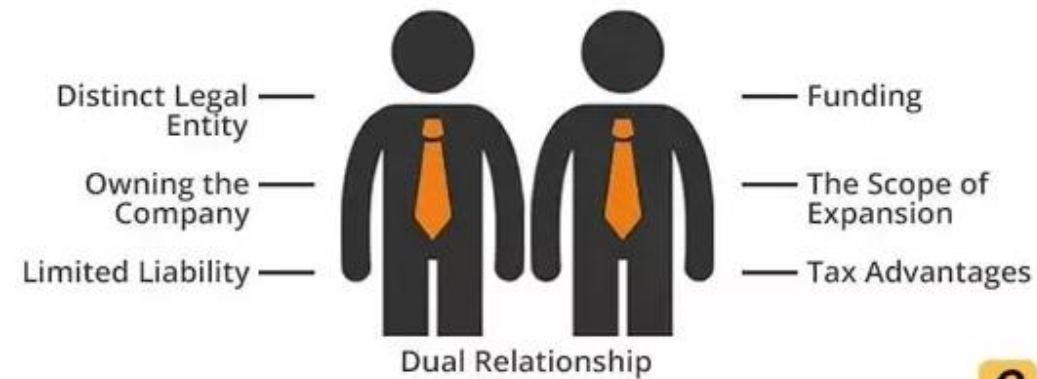
– *in a nutshell*

A business entity which acts as an artificial legal person, formed by a legal person or a group of legal persons to engage in or carry on a business or industrial enterprise

Can be created and wound up by law only (juristic person)

Shields from personal liability and protects from other risks and losses

Members contribute capital and the profits are distributed among various stakeholders



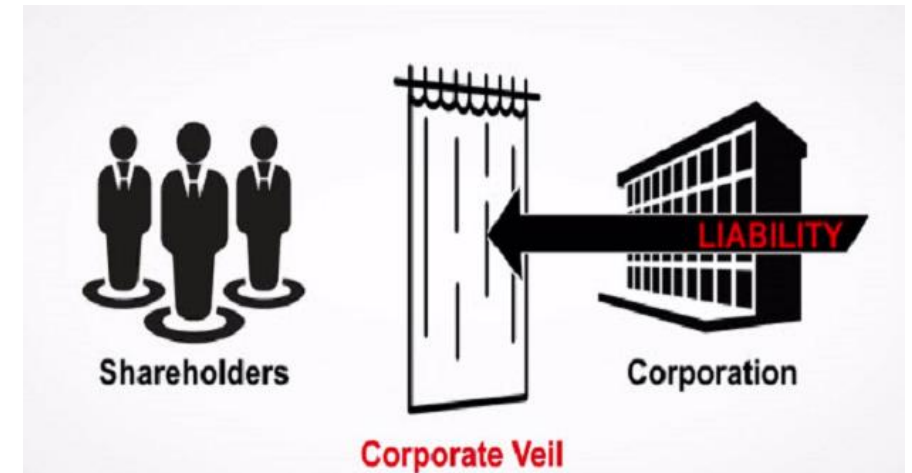
Salomon Case – *Facts & Issue*

- Mr. Salomon transferred his business of boot making, initially run as a sole proprietorship, to a company (Salomon Ltd.), incorporated with members comprising of himself and his family
- The price for such transfer was paid to Salomon by way of shares, and secured debentures having a floating charge (security against debt) on the assets of the company
- Later, when the company's business failed and it went into liquidation, Salomon's right of recovery (secured through floating charge) against the debentures stood in priority to the claims of unsecured creditors, who would, thus, have recovered nothing from the liquidation proceeds
- To avoid such alleged unjust exclusion, the liquidator, on behalf of the unsecured creditors, alleged that the company was sham, was essentially an agent of Salomon, and therefore, Mr. Salomon being the principal, was personally liable for its debt.

Question – is Mr. Salomon personally liable for the debt or is the company Salomon Ltd. liable for the debt of the unsecured creditors?

Salomon Case – *Decision*

- From its incorporation date a limited company becomes a **legal person** with the rights and duties distinct from those of the members and shareholders
- The company was properly **incorporated**, and it was not for the court to speculate as to the motives for incorporation
- Just because nearly all shares were owned by a single person made no difference
- A company and those individuals directing its are, in law **separate persons**
- There is a **corporate veil** between them, though this might be lifted or “pierced” in an extraordinary case



Thus, Mr. Salomon is not personally liable

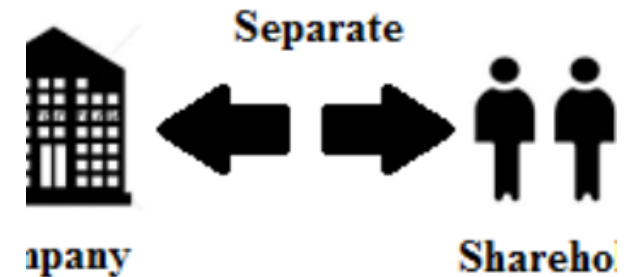
Lee's Air Farming Ltd Case – *Facts & Issue*

- Mr. Lee had a company in which he held all of the issued capital except for one share held by his solicitor
- He was also the governing director of the company and was employed at a salary as its chief pilot. Effectively, he controlled affairs of the company
- He was killed while performing a job for the company
- The company, pursuant to legislation, had taken out workers compensation cover on its employees and his widow sued for compensation as the widow of the “worker”, defined in the statute as “a person who works under a contract of service with the employer”
- Mrs. Lee was refused the compensation on the grounds that Mr. Lee could not be a worker when he was in effect also the employer

Question – is the claim on Mrs. Lee rightful?

Lee's Air Farming Ltd Case – *Decision*

- Mere fact that someone is a director of a company is no impediment to his entering into a contract to serve the company
- The company was a legal entity and there is no reason to challenge the validity of any contractual obligations which were created between the company and the deceased
- It is said that the deceased could not both be under the duty of giving orders and also be under the duty of obeying them. But it would be the company and not the deceased that would be giving the orders. Control would remain with the company whoever might be the agent of the company to exercise
- A man acting in one capacity can make a contract with himself in another capacity. The company and the deceased were separate legal entities



Mrs. Lee was entitled to compensation, since it was perfectly possible for Mr Lee to have an employment contract with the company he owned

Company is a separate legal person but not a Citizen

Central Government Act

Article 19 in The Constitution Of India 1949

19. Protection of certain rights regarding freedom of speech etc

- (1) All citizens shall have the right
- (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;
 - (c) to form associations or unions;
 - (d) to move freely throughout the territory of India;
 - (e) to reside and settle in any part of the territory of India; and
 - (f) omitted
 - (g) to practise any profession, or to carry on any occupation, trade or business



Right to Equality

Equality before law.

14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

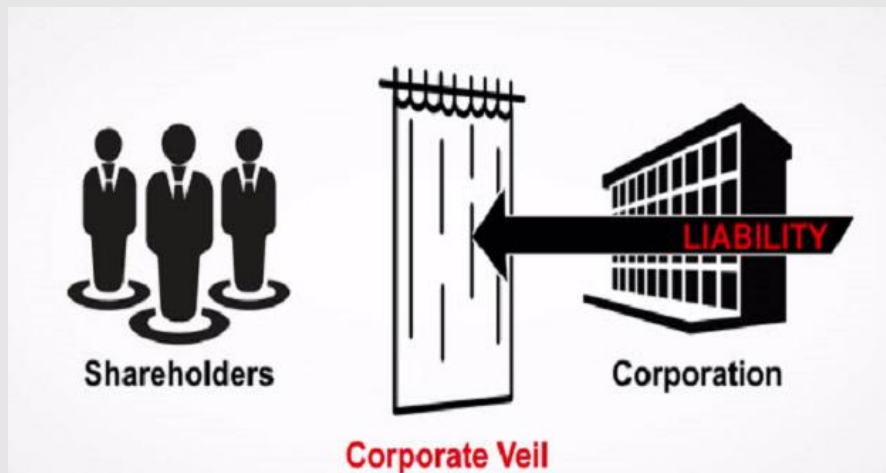


- Fundamental rights available to citizens are not available to companies, who are artificial legal persons
- Company has a “nationality” though, based on where it is incorporated and the nationality of its promoters etc.
- Company also has a domicile and residence based on its registered address

The shield of corporate veil can be lifted/pierced in certain circumstances to find out who is really behind the act

Protection from being personally liable for the company's debts and other obligations can be taken away in case of:

- Wrongful or illegal acts by Director (s)
- Reduction of membership below statutory minimum
- Misdescription of name of company in signing any cheque, promissory note etc.
- Fraud or improper conduct
- Failure to refund application money
- Tax Evasion



Not exhaustive ..

Satyam Scandal – rings any bells?

Indian IT scandal boss arrested

The founder of scandal-hit Indian software company Satyam has been arrested two days after he admitted falsifying the firm's accounts.

Ramalinga Raju, who stood down as Satyam's chairman on Wednesday, is charged with offences including criminal conspiracy and forgery.

Mr Raju has already revealed that the firm had exaggerated its cash reserves by some \$1bn (£661m).



Mr Raju had been upheld as a leading entrepreneur

THIS STORY IS FROM JANUARY 22, 2009

Satyam fudged FDs, has 40,000 employees: Public prosecutor

TNN | Jan 22, 2009, 12:58 IST



HYDERABAD: In further startling revelations in the Satyam scam, the Rajus have confessed to having forged the company's fixed deposits documents, diverting as much as Rs 20 crore monthly from the IT company, holding more than 400 benami land transactions running into thousands of acres, and claiming that the strength

of the company was 53,000 when it was actually only 40,000. (Watch)

Hindustan Times, April 09, 2015

A special CBI court on Thursday sentenced B Ramalinga Raju, his two brothers and seven others to seven years in prison in the Satyam fraud case.

The court also imposed a fine of Rs 5 crore on Ramalinga Raju, the Satyam Computer Services Ltd's founder and former chairman, and his brother B Rama Raju and Rs 20-25 lakh each on the remaining accused.

What: The scandal broke in 2009 when founder-chairman of Satyam Computers Ramalinga Raju confessed that the company's accounts were tampered with. He disclosed a Rs.7,000-crore accounting fraud in the balance sheets.

Who: The 10 people found guilty in the case are: B. Ramalinga Raju; his brother and Satyam's former managing Director B. Rama Raju; former chief financial officer Vadlamani Srinivas; former PwC auditors Subramani Gopalakrishnan and T Srinivas; Raju's another brother B Suryanarayana Raju; former employees G. Ramakrishna, D. Venkatpathi Raju and Ch Srisailam; and Satyam's former internal chief auditor V.S. Prabhakar Gupta.

Stayzilla Case – heard of it?

Travel startup Stayzilla CEO Yogendra Vasupal arrested

A source close to ET confirmed that Jigsaw Advertising had slapped charges of defrauding against the company causing Vasupal's arrest.

ET Bureau | Last Updated: Mar 15, 2017, 12.16 PM IST



Travel startup Stayzilla CEO Yogendra Vasupal arrested

BENGALURU: Travel startup [Stayzilla](#), which announced halt of its operations last month, ran into fresh trouble with its founder and chief executive [Yogendra Vasupal](#) taken into custody by commissioner of police in Chennai and locked up in [Puzhal](#) prison, a source ET spoke to confirmed.

According to an email sent by cofounder [Sanchit Singhi](#), he asked investors of the company to help Vasupal who went 'missing' or out of contact after Vasupal last confirmed

his location at the commissioner of police department after which sent a message to Singhi saying 'they have snatched his phone,' the email said. ET has a copy of the email.



Stayzilla raises \$13 mn from existing investors

2 min read . Updated: 13 May 2016, 02:40 AM IST

[Priyanka Sahay](#)

The funding round was split into three tranches of \$8.8 mn, \$1.9 mn and \$2.4 mn between Nov 2015 and Mar 2016

StayZilla founder Yogendra Vasupal granted bail

Judge S Baskaran, while granting bail, termed the case as "purely a dispute between two businessmen."

By [Bharani Vaitheesvaran](#), ET Bureau | Last Updated: Apr 12, 2017, 11.23 AM IST



StayZilla founder Yogendra Vasupal granted bail

CHENNAI: [StayZilla](#) Co-Founder [Yogendra Vasupal](#) was today granted [bail](#) by the [Madras High Court](#) on a condition that he should deposit Rs 40 lakh with the court to establish bonafide intentions.

Judge S Baskaran, while granting bail, termed the case as "purely a dispute between two businessmen."

Interestingly, the counsellor for Jigsaw had pushed for mediation as a means to settle the issue but Vasupal's counsellors told the court firmly their client was not up for mediation.

The money deposit was necessitated after counsellors for Jigsaw raised questions over Vasupal's intentions to settle dues. "They closed StayZilla, which made us apprehensive," the counsellor said. The judge has given Vasupal one week's time for the deposit.

Comparison of Common Business Entities In a nutshell

Basis	Sole Proprietorship	Partnership	Joint Stock Company
Formation	Minimal Legal Formalities, easiest formation	Registration is optional, easy formation	Registration compulsory, lengthy and expensive formation process
Members	Single owner	Minimum- 2 Maximum : (Banking- 10 Others- 20)	Minimum Private- 2 Public Company- 7 Private Company- 200 Public Company- unlimited
Capital Contribution	Limited finance	Limited but more	Large financial Resources

Basis	Sole Proprietorship	Partnership	Joint Stock Company
Liability	Unlimited	Unlimited and joint	Limited
Control and Management	Owner takes all decisions, quick decision making	Partners takes decision, consent of all partners is needed	Separation between ownership and management
Continuity	Unstable, business and owner regarded as one	More stable but affected by status of partners	Stable because of separate legal status

Not exhaustive

Considerations while choosing a business entity

1. Ease of formation and exit
2. Ability to raise capital
3. Tax treatment
4. Liability protection
5. Costs, procedures, and compliances

Not exhaustive



Chairman Production Reception
Sales Board of Directors Finance
Vice Pres COMPANY R&D
CEO STRUCTURE CFO
Team IT Accounting
Task Headquarters Managers
Director Corporation Personnel Boss
Main Office Managing Director
Recruitment President Corp



LLP introduced in January 2009 to combine the best of both worlds i.e. partnership and company



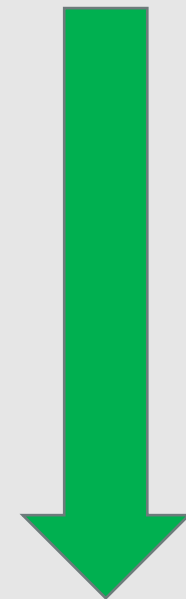
SOLE
PROPRIETORSHIP



PARTNERSHIP



COMPANY



Limited Liability Partnership (LLP)

Limited Liability Partnership (LLP)

- *in a nutshell*

Combines the limited liability of a company and the flexibility of a partnership

Continues its existence irrespective of changes in partners, and can enter contracts and hold properties

Partners' liability limited to the agreed contribution

No partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners

Min. 2 Partners

Low formation cost

No compulsory audit



Easy to establish

Limited Liability

Tax benefits



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Types of business entities – conceptual understanding



Types of business entities – one for your Startup/business



Other legal aspects in the context of Startups



Summing it all up



Startup India recognition

Department for Promotion of Industry and Internal Trade (DPIIT)

An entity shall be considered as a Startup, it is incorporated as either one of the following:

- a **private limited company** (as defined in the Companies Act, 2013)
- a **registered partnership firm** (under section 59 of the Partnership Act, 1932)
- a **limited liability partnership** (under the Limited Liability Partnership Act, 2008)

(Up to ten years from the date of its incorporation/ registration)



There are other conditions also which must be checked on the startup India website

Registered Partnership Firm (1/3)

- Min 2 partners, banking business – max 10 partners, any other business – max 20 partners. Only criterion to commence business as a partnership is the finalization and execution of a Partnership Deed between the Partners
- The partnership deed created by the partners should be on stamp paper in accordance with the Indian stamp act and each partner should have a copy of the deed
- Usually a partnership deed covers:
 - name and address of all the partners and the firm, nature of the business carried on, date of commencement of the business, duration of the partnership, capital contribution and share ratio of each partner, duties, powers and obligations of each partner, salaries, commission for payable partners, Interest on partner capital and partner's loan



Registered Partnership Firm (2/3)

- A partnership firm can be registered at the time of creation or after
- If the registrar is satisfied with the partnership deed, then he shall record an entry of the statement in a register called the Register of Firms and issue a Certificate of Registration
- **Important to note** registration with the registrar of firms is different from registration with the income tax department. Registration with the income tax department is mandatory while, registration with the registrar of firms is optional. It is also mandatory for all firms to have a pan card
- After obtaining the pan card the firm will have to open a current account in the name of the partnership firm and operate all its transactions through this bank account



Registered Partnership Firm (3/3)

- Each partner is required to pay personal taxes on their income and there is joint liability for any debts or cases where the firm is sued
- A partner of an unregistered firm cannot file a suit in any court against the firm or other partners for the enforcement of any right arising from a contract or right conferred by the Partnership Act
- No suit to enforce a right arising from an agreement can be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered.
- Partners are free to choose any name they like as long as it follows these rules:
 - The name must not be too similar or identical to another existing firm which is involved in the same business. This is to prevent confusion and protect the goodwill or reputation of the already existing firm.
 - The firm must not contain words like emperor, crown, imperial or words implying or expressing patronage, sanction or approval of the government. However, if the state government signifies its consent in writing to use such words as part of the firm's name it can be done



Limited Liability Partnership (1/3)

- Limited Liability Partnership Registration, governed by the Limited Liability Partnership Act, 2008, combines the benefits of a partnership with that of a limited liability company
- LLP was introduced to provide a form of business that is easy to maintain and to help owners by providing them with limited liability
- Most important reason for registering as LLP is the limited liability. The members of the firm are only liable for a small amount of debt incurred by it. This is entirely different from proprietorship and partnership where the personal assets of directors and partners are not protected if the business becomes bankrupt
- LLP is a separate legal entity from the partners. Each partner can sue the other in case a situation arises



Limited Liability Partnership (2/3)

- Transferring the ownership of LLP is also simple. A person can quickly be inducted in as a designated partner and the ownership switches to them
- An LLP can own or acquire property because it is recognized as a juristic person. Partners of LLP cannot claim the property as theirs
- An LLP has partners, who own and manage the business. This is different from a private limited company, whose directors may be different from shareholders. For this reason, VCs do not prefer in the LLP structure
- At least two partners are required to form an LLP. There is no limit to the maximum number of partners
- No shared capital requirement, though each partner must have an agreed contribution towards it
- At least one Designated Partner as an Indian resident



Limited Liability Partnership (3/3)

- Designated Partner Identification Number (DPIN) is a registration required for any person who wishes to be appointed as a Designated Partners of LLP
- The registered office of an LLP does not have to be a commercial space. Even a rented home can be the registered office, so long as an NoC is obtained from the landlord
- Name must not be pre-registered. You can check on the free search facility on the MCA portal. The registrar only approves LLP names that are not taken before
- The approval of the name will be made by the Registrar only if the Central Government does not deem it undesirable. The name should also not hold any resemblance to any of the existing partnership firms, LLPs, trademarks, or body corporates
- LLP agreement is very crucial in a limited liability partnership as it determines the mutual rights and duties amongst the partners, and between the LLP and the partners
- Existing partnership and Pvt. Ltd. Company can also be converted to an LLP



Company under

THE COMPANIES ACT, 2013

[Act 18 of 2013]

As amended by

The Companies (Amendment) Second Ordinance, 2019
(No. 6 of 2019), dt. 21-2-2019, w.r.e.f. 2-11-2018

The three basic types of companies which may be registered under the Act are:

- Private Companies (two or more persons)
- Public Companies (seven or more persons)
- One Person Company

For the purpose of liability:

- a company limited by shares; or
- a company limited by guarantee; or
- an unlimited company

Types of Company based on Liability

Unlimited Liability Companies (least common)

Members are liable for the company's debts in proportion to their respective interests in the company and their liability is unlimited. They may be either a public company or a private company

Companies limited by guarantee (less common)

Liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound-up

Companies limited by shares (most common)

Liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them is termed as a company limited by shares. For example, a shareholder who has paid ₹75 on a share of face value ₹100 can be called upon to pay the balance of ₹25 only. Companies limited by shares are by far the most common and may be either public or private



Effect of registration of a Company

As per section 9 of the Act



From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having **perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name**



Public Limited and One Person Company

One Person Company (OPC)

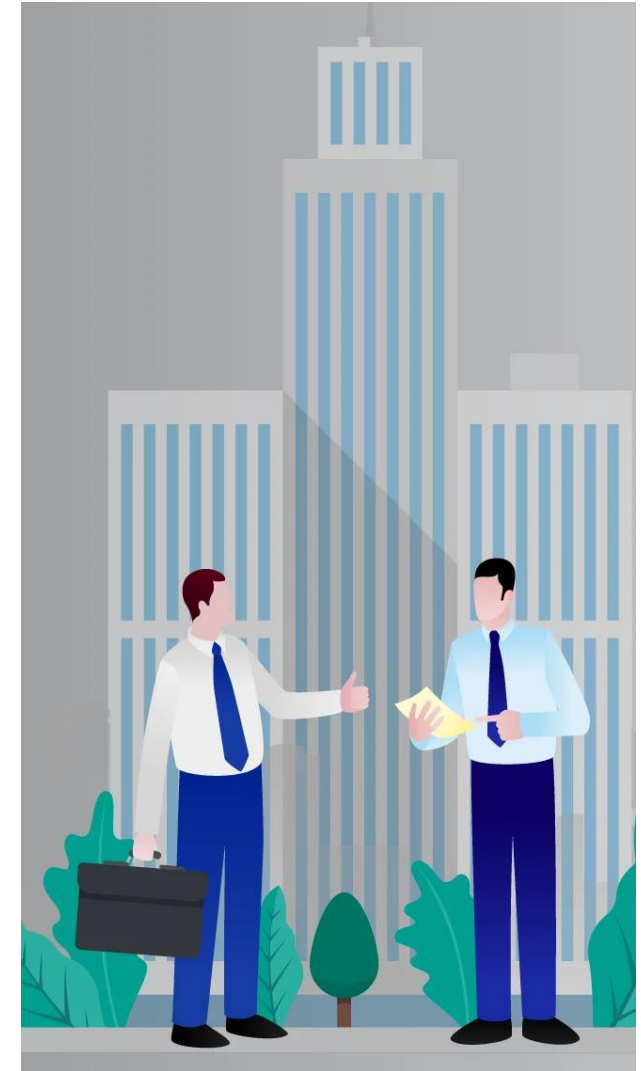
- One Person Company means a company which has only one person as a member
- It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, access to the market, limited liability, and legal protection available to companies.
- No minimum paid-up share capital
- Subject to less compliances in terms of filing returns, balance sheets, audit etc.
- Name must end with (OPC) Private Limited

Public Limited Company

- Has limited liability and offers shares to the general public
- It's stock can be acquired by anyone, either privately through (IPO) initial public offering or via trades on the stock market
- Strictly regulated and is required to publish its true financial health to its shareholders
- Minimum paid-up capital of Rs 5 lakh
- Minimum 7 shareholders and minimum of 3 directors
- Compulsory requirement to add the word 'limited' after their name.

Private Limited Company

- Approximately 90% of companies in India are registered under Private Limited Company
- Minimum of two shareholders and two directors are required. A natural person can be both a director and shareholder, while a corporate legal entity can only be a shareholder
- Foreign nationals, foreign corporate entities or NRIs are allowed to be Directors and/or Shareholders of a Company
- No minimum paid-up share capital. Minimum Authorized capital- Rs.1 lakh
- Maximum number of members are 200 which will not include:-
 - Members who are employees of the company
 - Members who are ex-employees of the company and were members while in such employment and who have continued to be members after ceasing to be employees
- No invitation to the public to subscribe for any shares or debentures of the company
- No invitation or acceptance of deposits from persons other than its members, directors or their relatives



Compliance requirements of a private limited company

Board Meeting

- There should at least be four board meetings conducted in a calendar year
- 1/3rd of the total number of directors or minimum 2 whichever is greater should be present at the meeting and be intimated at least 7 days prior about the agenda of the meeting
- Minutes of the board meeting is to be kept at the registered office of the company

Annual General Meeting (AGM)

- One AGM should be held every year and a gap of 15 months should exist between two AGMs
- Purpose is to discuss financial statement, appointment of auditor, declaration of dividend, remuneration, etc.

Not exhaustive

Appointment of the Auditor

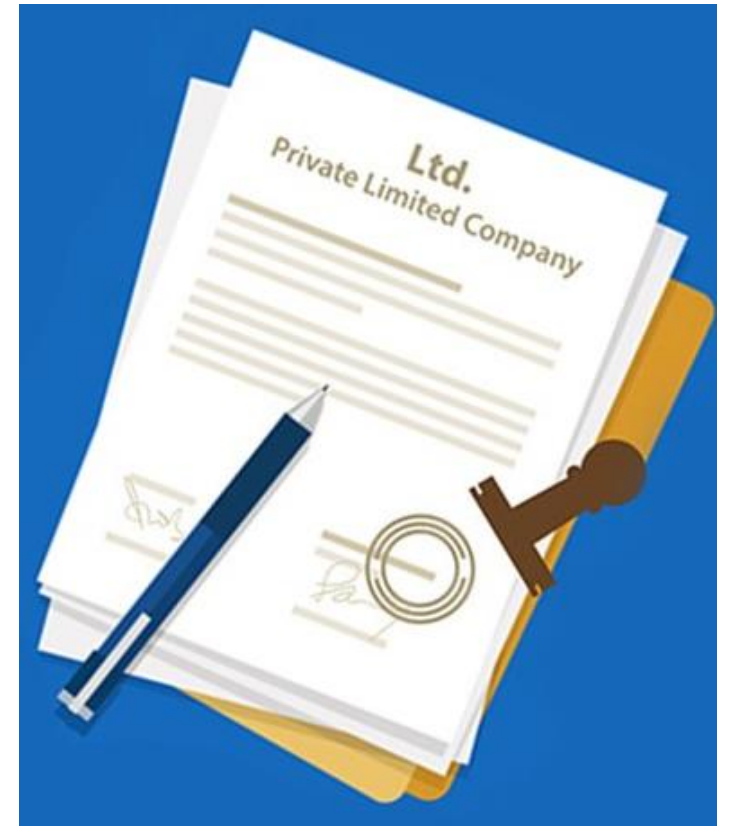
- Companies must appoint their First Auditor within 30 days of incorporation. The First Auditor will be appointed for five years

Director Disclosure

- All the directors of the company are required to disclose their interest in any other company. Such disclosure is to be made every year on the first Board Meeting
- In case of appointment of a new director qualification of the director is to be taken as a declaration

Accounts to be audited by a statutory auditor

- For preparing/verifying the annual report and financial statement and to get the financial report audited, company should have a statutory auditor who shall compulsorily audit the same



Duties of Directors in a Company

As per section 166 of the Act

1. A director of a company shall act in accordance with the articles of the company
2. A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment
3. A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment
4. A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company
5. A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company
6. A director of a company shall not assign his office and any assignment so made shall be void
7. If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Directors' duties

Promoting the success of the company – protecting creditors on insolvency



Law regarding picking Company Name

Companies Act 2013



- The name stated in the memorandum shall not
 - a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or
 - b) be such that its use by the company— (i) will constitute an offence under any law for the time being in force; or (ii) is undesirable in the opinion of the Central Government.
- A company shall not be registered with a name which contains—
 - a) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or
 - b) such word or expression, as may be prescribed

General rules for picking Company Name



Unique Component

In Flipkart Internet Private Limited, Flipkart is the unique component. Now, once taken, the name Flipkart will not be given to any other business within the suffix Internet or even related categories (E-commerce and Online Solutions, for example). But there is some subjectivity, too. Some RoCs may not even approve the name Flipkart Chemicals Private Limited, reasoning that the e-commerce brand Flipkart is too well-known. Similar sounding names would also be rejected (so no Flipcart)

Blacklist

Abbreviations, adjectives and generic words are rejected. So BBC or XYZ would be rejected, as would Good Quality Biscuits. The words bank, exchange and stock exchange, unless approved by RBI or SEBI, would also be rejected

Descriptive Component

In Biocon Research Private Limited, the word 'Research' describes the business the company is into. You cannot have 'Research' in your name if you're, say, in the logistics or restaurant business

Final words and recommendations



- Clarity about the vision and scale of business makes the choice of business entity easier and helps you prepare a solid legal foundation
- You must consider factors such as - level of control you want, the level of compliance you will be able to follow, the amount of investment you will require, level of privacy etc.
- Go for LLP if you want to maintain privacy, do not necessarily require external funding, and want to keep minimum level of compliances
- However, if you want to scale up fast enough, want to attract external funding/investors, can manage compliance requirements then go for a private limited company

***Disclaimer** – rules and regulations keep changing particularly in light of Indian government’s aim to go higher up on Ease of Doing Business rankings. Candidates must refer to latest regulations before making a final decision*



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Other legal aspects in the context of Startups



Summing it all up



Major legislations that regulate business operations in India

Companies Act	Contains provisions relating to formation of a company, powers and responsibilities of the directors and managers, raising of capital, holding company meetings, maintenance and audit of company accounts, powers of inspection and investigation of company affairs etc.
Indian Contract Act	Lays down the general principles relating to the formation and enforceability of contracts; rules governing the provisions of an agreement and offer; the various types of contracts including those of indemnity and guarantee, bailment and pledge and agency. It also contains provisions pertaining to breach of a contract
Industrial Disputes Act	Main legislation for investigation and settlement of all industrial disputes
Competition Act	Prevents monopolies, promotes competition in the market, protects the freedom of trade for the participating individuals and entities in the market
Arbitration and Conciliation Act	Laws relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith
and other laws relating to intellectual property rights; Insolvency and Bankruptcy Code, 2016 (IBC), and to labour welfare	



Co-founders' Agreement

defining the rules of the game, before starting the game

Co-founder's agreement helps you define the rules and boundaries of the game

- Covers aspects like - equity ownership, initial investments and responsibilities of each co-founder
- Purpose is to make the understanding of the co-founders regarding the functioning of their company and relationship and obligation between co-founders legally binding through a formally written agreement
- Goal is to minimize the possibility of surprises and unproductive altercations in future when the company is functional



A co-founder's agreement is different from a shareholder's agreement but can have some common elements

Key Considerations – Co-founders' Agreement

Equity ownership

How much money is being invested and at what stage in the life cycle of the company? Is the founder also bringing other intangibles along with the money, such as experience, industry connects and credibility?

Vesting

Whether the vesting of the shares shall be time based or milestones based? What happens if one of the co-founders decides to leave before the expiry of the term of the Agreement?

Demarcation of the roles and responsibilities

What are the different roles and responsibilities that each of the co-founders will perform? How will be the accountability fixed?

Restriction on transfer of shares

What kind of restriction on transfer of shares may be imposed by the company? What shall be the lock-in period of the shares?

Intellectual property assignment

Whether the intellectual property developed by the founder shall be fully transferred to the company or shall it be shared between the company and the founder? How will the valuation of the intellectual property to be transferred done?

Value additions by the founders

How many shares are to be issued against the value additions? How shall the value of the shares be determined?

Non-compete

What constitutes a competing business? What shall be the period of non-compete so that it is not considered as unreasonable?

Confidentiality

Whether the company shall sign a separate non-disclosure agreement with the founders? What constitutes the confidential information of the company? What shall be the duration for which the confidentiality obligations will subsist post the expiry of the Agreement?

Employment

What shall be the designation, roles and responsibilities of the founder? How much compensation and other benefits shall be provided to the founder? What shall be the mechanism for termination of the employment contract?

Future financing

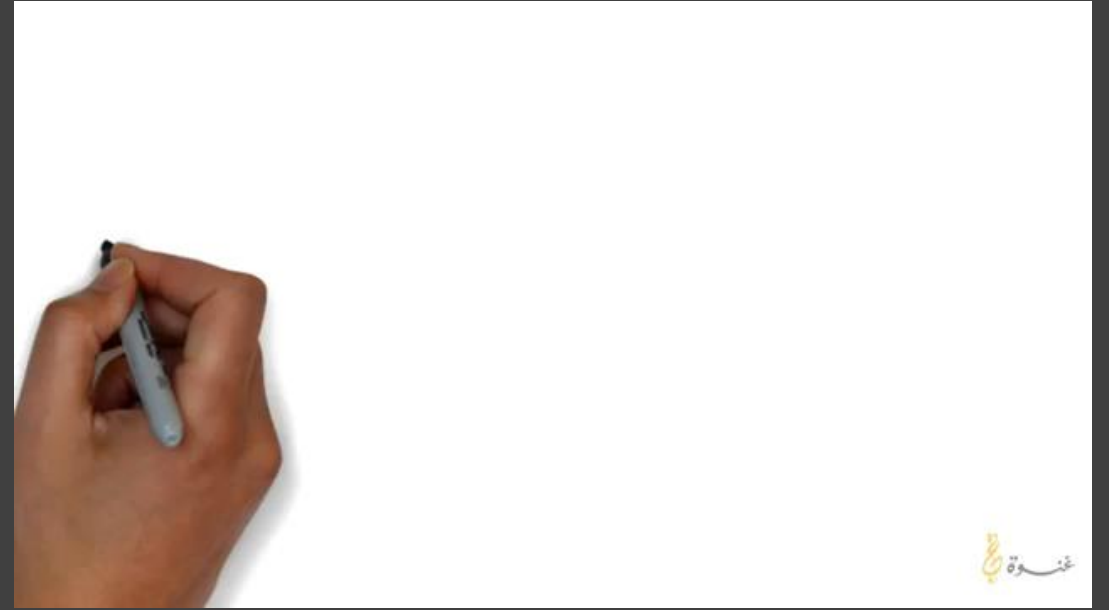
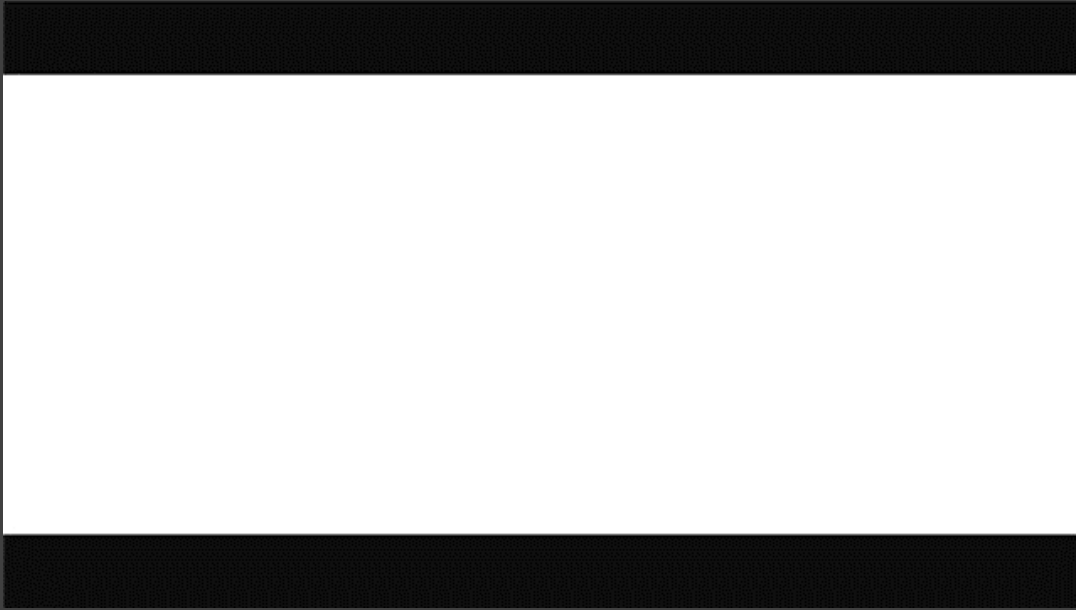
Whether the additional finances shall be contributed by the founders as equity or as debt? What shall be the method of valuation of equity in case the financing is done through equity and the rate of interest to be paid by the company in case the financing is a debt financing?

Decision making

What shall be structure of the board of directors? How will the simple and complex decisions be made? What will be the mechanism adopted in case there is a deadlock in decision making?

Termination and dispute resolution

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.



HIGHLY RECOMMENDED VIDEO

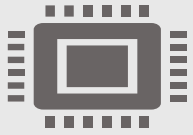
<https://www.youtube.com/watch?v=YAUELZBjHjc>



Intellectual Property

creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce – patents, copyright, trademark

Intellectual properties are one of the most valuable assets of any business.
Startups especially must take appropriate steps to keep them secured



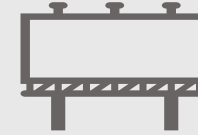
Patents

Patents protect products/processes that are novel, inventive and have utility. For example, a software company must file for a patent if they have created a unique and new computer programme.



Trademarks

Trademarks protect the brand name, logo, signs/slogans etc. For example, if companies like Apple had not applied for their well-known logo, they would not have been able to create a billion-dollar company.



Copyrights

Copyrights are very important for startups that have businesses related to creative, artistic works. A multimedia company must register the songs/ movies it creates.

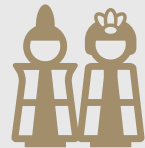
IP protection is important because:

- it provides the startup with maximum protection from infringers and a legit legal backing that prevent others to use the brand
- it can lure investors and clients willing to buy out your brand at a later stage. Also, assigning or licensing others to use your IP can earn your profits

Trademark your brand and start using it immediately



As your business grows, so does its goodwill. It is therefore necessary for you to protect your trade name, logo, tag line, and key phrases from misuse



Trademark is a combination of words and pictures which is registered with the government as belonging to your business



Under the process of the existing law, registering a trademark typically takes about two to three years; however, your business can start using the term "TM" next to its name from the date on which the application for the same is filed



It is advisable to file for your trademark at an early stage, before you start your branding activities



Even if you do not apply it is ok. You will atleast have the first mover advantage





Other aspects for a strong
legal foundation

GST registration is one of first steps of business initiation

- **Goods and Services Tax (GST)** is an indirect tax (or consumption tax) levied on the supply of goods and services
- It is a comprehensive, multistage, destination-based tax: comprehensive because it has subsumed almost all the indirect taxes except a few state taxes
- Multi-staged as it is, the GST is imposed at every step in the production process, but is meant to be refunded to all parties in the various stages of production other than the final consumer
- As a destination-based tax, it is collected from point of consumption and not point of origin like previous taxes
- It is very important to understand the functioning of GST and to file timely returns





Startups should not miss on benefits of registration as an MSME

MSME registration is not mandatory but is certainly beneficial for a Startup

- Eligibility for lower rates of interest
- Excise exemption scheme
- Tax subsidies
- Power tariff subsidies
- Capital investment subsidies
- Easy sanction of bank loans (Priority sector lending)
- Rebate in trademark/patent registration etc.
- Quicker approvals



Registrations and licenses which may be required by your business

- Import Export Code (IEC) if the business involves import or export
- Employees' Provident Fund Organization - if 20 or more employees
- Shop and Establishment License for physical premises
- Permanent Account Number (PAN) for income tax
- Taxation Account Number (TAN) for withholding of tax (if applicable in your state)
- Professional Tax Registration
- Employees' Insurance (ESIC) – if 10 or more employees, salary cap is applicable
- Depending on the industry in which it operates, the business may be required to obtain specific licenses, such as a FSSAI license for food manufacturers, storage, transporters, distributors, etc.



It is also important to frame certain policies right from the beginning






Not exhaustive

- Website Terms and Conditions
- IT Policy (level of access, restricted sites, backups, checkups, etc.)
- Use of Official Assets Policy (use of company's laptops, vehicles, etc.)
- Human Resource Policy (Recruitment, training, travel, reporting, attendance, reimbursement, leave, disciplinary, termination, notice, handover, full and final, non-disclosure agreement)
- Code of Conduct (corporate culture, sexual harassment, conflict of interest, whistle-blower, etc.)





Preparing the Legal Foundation for a Startup

-  Broad understanding - law in general
-  Different types of business entities – broad understanding
-  Different types of business entities – deep dive
-  Other legal aspects in the context of start-ups
-  Summing it all up

A strong legal foundation will help you form a stable and scalable business entity

- There is a strong emphasis in India on building a strong entrepreneurship culture
- A properly formed enterprise within the prescribed rules and regulations can go a long way in:
 - Taking advantage of multiple benefits floating around
 - Making a scalable and sustainable business model
- You need not be a lawyer or an accountant yourself. You just need to surround yourself with the right advisors and right team
- Do not be stingy towards paying retention fees to a lawyer, accountant etc.



Finally – make full use of the brilliant resources available as part of Startup India



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See you next week!

Vineet Budhiraja

vineetbudhiraja@gmail.com

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