

START-UPS: A LEGAL AND TAXATION PERSPECTIVE

PART I and II

STUDY CIRCLE - V.P. SHINTRE & ASSOCIATES

Adv Sidhartha Jatar

9767916540

sidharthajatar@gmail.com

Vaishnavi Bhaskaran

8095504383

Vaishnavi@spectrumlegal.in

Adv Kunal Gokhale

9503024474

kunalugokhale@gmail.com

Background

- Typically it is seen that that startup founders are focused more on the product with lesser emphasis on legal compliances
- However, non-compliances may lead to hampering the business. From an investor perspective also it is important for start ups to ensure legal compliances
- It would be helpful for founders to know about the applicable laws as well beneficial legal provisions for them (such as benefits as MSME, 'StartUp India')

Choice of entities for conducting business

Partnership/ LLP/ Company

Key considerations

- Flexibility of doing business
- Liability of the entrepreneurs
- Taxation perspective

Registration process under Start Up India

Eligibility

- Entity has to be a Pvt. Ltd. company /LLP/ Partnership
- Firm remains a start up for the first 10 years
- Turnover should not exceed Rs. 100 crores in any of the 10 years
- Approval is granted by DIPP

Documentation process

- Registration form
- Recommendation Letters
- Incorporation certificate
- Tax exemption
- Self certification

Benefits of registration under Start Up India Program

(Legal)

- Self certification with respect to Labour Law and Environmental compliances
- Patent application and IPR application
- Easy public procurement norms
- Easy winding up

Benefits of registration under Start Up India Program

(Taxation)

- Registration process for tax benefits
- Tax exemption of income earned
- Reinvestment benefit
- Set off of losses benefit
- Exemption from Angel tax provisions

Basic Compliances to be procured

- Income Tax registration – PAN & TAN
- GST registration
- Shops & Establishments Act license
- MSME registration and benefits
- TOU and Privacy Policy

PART - II

Term sheets

- Preliminary indication of interest
- Typically non-binding unless otherwise indicated
- Subject to fulfilment of a number of conditions and a due diligence exercise
- Sets out the proposed investment amount, valuation of the company, investor's rights, exit of the investor
- Protective provisions

Types of Instruments

- Equity Shares
- Preference Shares
- Convertible Instruments etc.

The Due Diligence Process

What are the areas and red flags investors look at?

- Corporate Documents
- Material Agreements
- Intellectual Property
- Employees
- Documentation process
- Financial Documents
- Immovable Property
- Statutory Registrations & Licenses
- Litigation

Key Provisions in SHAs

- Governance Terms : Shareholder meetings, Board meetings
- Restrictions on share transfer; Promoter lock-in
- Protective Provisions: Drag-Along, Tag-Along, ROFR, ROFO, Reserved Matters, Non-compete, Non-disclosure, Anti-dilution
- Liquidation preference
- Exit

Issue of equity to employees/advisors

- ESOPs
- Sweat equity
- Phantom Stocks

THANK YOU