



LEGAL GUIDE FOR STARTUPS & ENTREPRENEURS



BIZLEGAL PRESENTS THIS GUIDE FOR THE ENTREPRENEURS WHO HAVE DECIDED TO TAKE THE PLUNGE AND ARE NOW READY TO KICKSTART THEIR BUSINESS. THIS GUIDE WILL GIVE YOU ESSENTIAL LEGAL TIPS BEFORE YOU TAKE THE FIRST STEP IN YOUR ENTREPRENEURIAL JOURNEY.

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Introduction

As an entrepreneur, setting up your new business can be daunting at times; there's so much legalities to follow and comply with in addition to the workload of your new venture that it's difficult to get your priorities in order.

We'd like to help make the path a lot easier for you!

Our journey here will outline the key requirements involved with a proper business startup – for self-employed owners, as well as partners and shareholders. To be clear, this content is meant to be an informative outline of legal concerns, not to replace the legal advice of business solicitors.

In the following pages, we're going to unravel the secret of running a successful startup through the **FIRST THREE STEPS**. Taken together, this outline and the tips included will prove to be an effective initial checklist for running your business smoothly.

LET'S GET STARTED !

1. Choosing a unique Business Name

Selecting just the right name for your business isn't as simple a task as it seems. It is going to be identified with your services or products (or both), and if the name choice is too broad or too narrow it may miss the mark, now or in the future.

Take the **time to research name** ideas through the **Ministry of Corporate Affairs website**. Is your idea for a business name already taken, or do you see one so similar to yours that a customer might be confused? If so, your name will be disqualified when you attempt its registration. Be aware that you aren't allowed to merely insert punctuation either – such as a hyphen or intentional misspelling, to differentiate your name from another enterprise.

There are several more regulations defining a legal business name, such as whether you are mandated to include Limited, Ltd, LLP, etc. Additionally, there are restrictions against using what are deemed sensitive words and expressions within your chosen name.



Trademarks are other names you should explore before making a final decision. They are separately registered, and you may search existing trademark names listed with the Trademark Office. You are also able to see those waiting in the application stage or revisions queue. All trademarks are searchable by keywords, images, or their trademark number.

Another place to be searched for the name you plan to use is the world wide web. Why? Because it is going to be where you create an online business billboard (aka your website).

Remember, the web has become an all pervasive resource for everything from shoe repair to original art. If you don't have a proper online presence, then you're sorely out of the loop. A customer's ability to discover you amongst your competitors, as well as to locate your shop – even when they already know your name – depends on your having an online website. If the site's domain address doesn't match your business name or primary trademarked product, the result could have the same impact as burying your 'open for business' sign in your back yard.

If the domain for your business name is already in use, put your imagination back into first gear and figure out something unique. Do not make the big mistake of just buying the .net or .biz if your .in or .com is already being used by another company.



2. Structuring Your Business

Determine the proper entity structure for your business. Your choice of entity influences major future decisions that you might take like how you borrow money, how you will be taxed, how you will raise investments and how you structure the sale of your business. Set up your business from the start in a separate legal entity like a private limited company, so you protect your personal assets. Otherwise, you are personally responsible for the debts and obligations your business incurs.

In India, there are specific types of entities you can create from which to operate your new enterprise. Different laws affecting business operations will come into play, so once again, legal counsel is unequivocally advised.

A few basics affecting the particular business structure you choose will be:

- the number of partners with which you share the work & responsibilities
- the taxes you must manage and pay
- limitations as to how you may take money out of the organisation



Following shall describe the essential differences between various structures which could be formed in India.

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|---|--|--|--|
| Number of Members/Partners | In case of One Person Co. – 1 ; In case of Private Company- 2 (Min.) and 200 (Max.); and In case of Public Company- 7 (Min.) and unlimited (Max.) | Minimum 2 and Maximum 20 | Minimum 2 partners and there is no limitation of maximum number of partners. |
| Separate Legal Entity | Is a separate legal entity. | Not a separate legal entity. | Is a separate legal entity. |
| Perpetual Succession (Uninterrupted Existence) | Enjoys the benefit of perpetual succession, members may come and go but the Company exists. | Exists as per the will of the partners. Does not enjoy perpetual succession. | Enjoys perpetual succession, partners may come and go, but the LLP exists. |
| Cost of Formation | High | Low | Medium |
| Property Ownership | A company being a juristic person, can acquire, own, enjoy and alienate, property in its own name. No shareholder can make any claim upon the property of the company so long as the company is a going concern. | Partners are the joint owners of the properties and assets of the Partnership. | The LLP exists independently of its partners and therefore, has the ownership of properties and assets in its own name. |
| Requirement for registration | Mandatory | Optional | Mandatory |
| Creation | Created by law | Created by agreement or contract. | Created by law and by agreement. |
| Charter Document | Memorandum and Articles of Association are the Charter Documents | The Partnership Deed is the charter and the sole governing document of the partnership firm | The LLP Agreement is the charter of the LLP which denotes its scope of operation and rights and duties of the partners vis-à-vis LLP |
| Foreign Participation | Foreign nationals can become members of a company. | Foreign nationals cannot form partnership firm in India. | Foreign nationals can be partners in an LLP. |
| Investment Magnet | Highest traction for investment. | Lowest traction for investment. | Low traction fro investment. |
| Liability | Generally limited to the amount required to be paid up on each share. | Unlimited. Partners are severally and jointly liable for actions of other partners and the firm and liability extend to their personal assets. | Limited, to the extent their contribution towards LLP, except in case of intentional fraud or wrongful act of omission or commission by the partner. |
| Creditworthiness | Due to Stringent Compliances under various laws, Companies enjoys high degree of creditworthiness | Creditworthiness of firm depends upon goodwill and creditworthiness of its partners | Enjoys comparatively higher creditworthiness from Partnership due to stringent regulatory norms but lesser than |

3. Have Written Contracts in place

Generally, entrepreneurs value speed over accuracy when it comes to detailing relationships with partners, vendors, customers and even employees. Verbal agreements are virtually impossible to enforce. Contracts must address each party's obligations and explain how potential issues concerning your products or services will be resolved.

Be sure to document any modifications or extensions to your agreements in writing.

Also, it is highly recommended that if you are executing written contracts then avoid downloading boilerplates or contract forms from the web. The Internet is full of websites listing free contract or agreement forms you can download and use in your business. One website, for example, lists over 300 different types of forms, from articles of incorporation in various states and board resolutions, to work for hire agreements and waivers of notice. It sounds great to save money by using these boilerplate forms instead of paying expensive legal fees. But what might be the downside of using these free forms?

Here are few reasons why you should avoid using boiler plates:

1. **Selecting the wrong form:** Often laypeople will select forms to memorialize a transaction or agreement based on the name or title of the form. But *selecting the wrong form* may result in a completely different legal consequence than the one intended by the parties. For example, business owners may sign boilerplate forms titled "Partnership Agreement" when a "Joint Venture" was actually intended, or a License form when a Lease would have clearly been more appropriate or vice versa.



2. Ignoring the opportunity for Arbitration: before turning to free boilerplate contract forms, business owners should consider their *potential remedies* if an agreement goes sour. Most business owners prefer the simplicity and cost-effectiveness of *arbitration* instead of expensive and time-consuming litigation in court. Paying an attorney to draft a contract incorporating an arbitration clause which follows relevant law means that the contract's arbitration clause will be more likely held enforceable and allows the business the option of resolving disputes outside of court.



3. Not knowing your rights: contract forms fail to advise the contract users of the law and their rights.

4. Not knowing what you don't know: Using a boilerplate contract is dangerous because **you don't know what you don't know**. Whether you're leaving money or opportunity on the table, obligating yourself to something unnecessarily, or missing important clauses pertinent to your industry, you will find that legal expertise, even if just in the form of review, almost always pays for itself. Additionally, ambiguity in contracts is read against the creator of the agreement in courts of law and ignorance is no defence.

5. Not tailoring your contract to your specific situation: The problem with using free contract forms is these agreements fail to address legal issues unique to the particular transaction in question. For example, a contract to design a website should detail whether the customer or website designer owns the work - the code and scripts created specifically for the project. The answer is negotiated between the parties and then included in great detail as a clause of the contract for the project. Free contract forms are not sufficiently specific to address this issue, which can force the parties into court for a resolution should a dispute arise.



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