Compliance Toolkit
for Start-ups

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Acronyms and Key Definitions

AML	–	Anti-money Laundering
BHRISC	–	Business and Human Rights International Standard for Certification
CC	–	Citizen's Charter
CMP	–	Compliance Management Programme
CMS	–	Compliance Management System
CoI	–	Conflict of Interest
CPGRAMS	–	Centralized Public Grievance Redressal and Monitoring System
CTF	–	Counter-Terrorism Financing
DPIIT	–	Department for Promotion of Industry and Internal Trade
ESG	–	Environment, Social, and Governance
EU	–	European Union
GAAP	–	Generally Accepted Accounting Principles
GDRP	–	General Data Protection Regulation
GeM	–	Government e-Marketplace
GIZ	–	Gesellschaft für Internationale Zusammenarbeit GmbH
IAS	–	International Accounting Standards
ICC	–	Internal Complaints Committee
ICT	–	Information and Communication Technology
IFRS	–	International Financial Reporting Standards
IP	–	Integrity Pact
ISO	–	International Standardisation Organisation
POSH	–	Prevention of Sexual Harassment
PTFI	–	Partners for Transparency Foundation India
RBI	–	Reserve Bank of India
RTI	–	Right to Information
SEBI	–	Securities Exchange Board of India
UN	–	United Nations

Key Definitions

For the purpose of this report and the toolkit that follows, the terms used herein shall have the following meaning. Wherever a technical term is used and no definition is provided for in this section, it shall be construed in the same manner as is most commonly understood in the industrial (and where a specific sector is applicable, in its sectoral) context.

Compliance describes the actual behaviour of a given subject conforming to prescribed behaviour, and non-compliance or violation, occurs when actual behaviour departs significantly from prescribed behaviour. [1]

Conflict of Interest occurs when an individual's interests – family, friendships, financial, or social factors – does compromise his or her judgment, decisions, or actions in the workplace or when an individual's interest may interfere with the person's decisions while performing his/her official duties.

Start-ups is defined as per the notification of the DPIIT – [2]

An entity shall be considered as a start-up:

   a) if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India; and

   b) up to seven years from the date of its incorporation/ registration; however, in the case of start-ups in the biotechnology sector, the period shall be up to ten years from the date of its incorporation/ registration; and

   c) if its turnover for any of the financial years since incorporation/ registration has not exceeded Rupees 25 crores; and

   d) if it is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Provided that any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered a 'start-up'.

Toolkit refers to the toolkit developed for use by start-ups in India under this programme.

Disclosure refers to the publication of information relating to public projects, with the goal of increasing transparency. Proactive disclosure is when information is published routinely without any request for information having been made. Reactive disclosure is when information is provided in response to a request for information.

Money Laundering is an illegal activity carried out by criminals which occurs outside of the normal range of economic and financial statistics. The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Hence, money laundering is the processing of these criminal proceeds to disguise their illegal origin. [3]

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[1] O.R. Young, Compliance and Public Authority (1979) referred in Compliance with the AML/CFT International Standard: Lessons from a Cross-Country Analysis (IMF Working Paper) available at: Compliance with the AML/CFT International Standard: Lessons from a Cross-Country Analysis; by Concepcion Verdugo Yepes; IMF Working Paper 11/177; July 1, 2011

[2] Notification G.S.R. 501(E) (May 23, 2017) Department for Promotion of Industry and Internal Trade, https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/notification/Overall/1.%20notification_Revised_notification_Startups_Notification_23_05_17.pdf.

[3] https://www.fatf-gafi.org/faq/moneylaundering/

Risk is the deviation from expected outcomes. For this toolkit, risks do not necessarily have a negative connotation and may include scenarios that may be converted into opportunities based on risk analysis.

Public Sector Undertaking is a government owned enterprise in India where majority i.e., more than 50% of the paid share capital is held by central government or any state government or partly by central government and partly by one or more state governments. [4]

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[4] PE ENG Volume-1 FINAL web.pdf (dpe.gov.in)

Introduction

Start-ups are a vital catalyst for an economy – they create employment, stimulate consumption, and create wealth. In recent years, start-ups have received much-needed attention and support globally.

According to the Economic Survey 2020-21, in India, the government has recognised 41,061 start-ups as of December 23, 2020. India currently has the world's third-largest start-up ecosystem, with 38 firms being valued at over one billion USD. In 2020, despite the challenging conditions, the country has given around 12 unicorns. [1] This number is expected to increase in the coming years as the country progresses further. Government has taken various initiatives to strengthen the ecosystem for start-ups and it is only a matter of time that these efforts for boosting the economy show concrete results.

However, this growth is often hampered by internal and external challenges that start-ups face. Many start-ups do not focus on compliance processes and mechanisms which has long-term ramifications. Start-ups face challenges on various fronts and these are exacerbated by the bureaucratic trappings, sometimes. Subsequently, start-ups may advertently or inadvertently resort to malpractices in the absence of knowledge on how to deal with these issues. The result is that the resources of the enterprise are overburdened unnecessarily.

Factors affecting the overall functioning of start-ups in India

Growth factors

1. Expansion in the scope and characteristics of the Indian Market - India's population and economic growth has increased the purchasing power of its population which in turn has led to rise of a consumption-driven economy.

2. Government reforms and conducive policy environment - In recent years, the Government in India has taken several measures to support start-ups, including

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[1] "Unicorn" is a term used in the venture capital industry to describe a privately held startup company with a value of over $1 billion."
https://www.investopedia.com/terms/u/unicorn.asp

broadening the definition of start-ups, simplifying regulations, providing income tax exemptions and setting up multiple support funds and initiatives such as the "Startup-India".

3. Changing outlook towards entrepreneurship.

4. Technological Advancements - Technological processes and progress have evolved extensively, reducing the cost of doing business.

5. International partnerships and engagements – The big multi-national conglomerates are increasingly reaching out to start-ups to increase their outreach and scope of business.

Impediments to the growth of start-ups

1. **Complex Regulatory and Compliance Environment** - Despite many reforms and improvements, the present regulatory framework in which start-ups operate is still perceived to be complex, difficult, non-transparent, inefficient, and unpredictable. This leads to a weaker/ uneven governance environment, which start-ups can find difficult to work within.

2. **Limited Financial Capacities** - Though the Government has launched many schemes, funding opportunities, seed funds for the start-ups, many cannot avail of these due to limited knowledge or lack of proper certification and need of extensive documentation and procedural requirements.

3. **Lack of Skilled Manpower** - The start-ups often find it difficult to hire the needed skilled manpower owing to their limited financial capacities to compensate a trained workforce adequately, at least initially. At the same time, it is difficult for a start-up to train all its staff members from scratch.

4. **Digital Divide and the Gender Divide** – Though the digital India initiative has brought internet accessibility to many nooks and corners of the country, some are still beyond the reach of such services. Further, there is still a reservation when women choose entrepreneurship as a career option. Therefore, there is a divide on different fronts that impedes the overall growth of start-ups in India.

Compliance and Business Integrity: Needs, Benefits, and Start-ups

In the contemporary business environment, start-ups must do business by thinking beyond the general precept of profit maximisation. The enterprises must cater and fulfill the compliances on various fronts today viz. - Environmental, Social, Governance, and Human Rights (ESG/HR). It has been observed that the prime focus of the start-ups is on the operations of the enterprise that help in building and enhancing the businesses. The focus on governance is either completely blindsided or considered an unnecessary burden because generally owners of start-ups are not aware about the benefits of good governance and its long-term impact on the business and organisational life. The result is that many start-ups succeed on the business front, but their sustainability is often vulnerable to mis or poor governance. Therefore, to develop enterprises that are not only durable on the business front but also succeed in terms of creating effective governance frameworks for all business operations, it is important for the start-up to develop governance frameworks since the inception of the enterprise.

It is important for the start-ups to further consider the fact that lack of effective governance measures may usher reputational damage in the contemporary business environment where the consumers are more informed and social media feeds life to the business of many start-ups. Such non-compliance may also bring with it litigation on various fronts. Robust and comprehensive governance frameworks not only minimise the possibility of such negative actions against the start-ups but also ensure uniformity in organisational operations.

With the crossing of borders and increase in number of trans-border enterprises, there is an impact of businesses across the globe. Looking at the business environment from this perspective, this toolkit has been developed to help the start-ups in developing compliance programmes to make their businesses more sustainable and responsible.

Further in this regard, Business Integrity also plays a crucial role. Compliance is the mandate that any organisation must comply with. Business integrity has a wider meaning and covers varied aspects like honesty, transparency, ethical ways of doing business, keeping the positive social impact of businesses intact, etc. Business integrity does not focus on ticking the pre-determined boxes but tries to develop a culture of ethics. As start-ups will build the business environment and the business culture of the future, it is very important for them to realise the importance of Business Integrity and to adopt ethical practices from the very start to have long lasting and thriving impact. Ethical business practices integrate the interest of various stakeholders and thereby benefit to the society at large.

What is the toolkit about?

This toolkit, though not exhaustive in its content, can be divided into two distinct parts - first, where the theoretical framework for implementation of an effective compliance programme is delineated and second, where illustrations and scenarios are discussed to help the start-ups deal with practical situations.

The toolkit focuses on important themes related to compliance including but not limited to – anti-corruption & anti-bribery policy & framework, integrity framework, risk-management, gift policy, prevention of sexual harassment at workplace, contract management, analysing the requirements for start-ups while establishing their business, etc. In the second part, the toolkit essentially provides the modus operandi in specific circumstances and some instances have been created to help the start-ups. Apart from these two components, specific legal requirements have also been described in the form of annexures for the start-ups.

This toolkit also provides some frameworks and whether they are necessary to be adopted by the start-ups in the preliminary sections. This toolkit also provides URLs to specific models (which have been internationally recognised) to help the start-ups develop their specific models on needs basis. The fundamental approach of this toolkit is to guide and hand-hold the start-ups in setting up compliance programmes.

The start-ups must not consider this toolkit as an end in itself but a means to an end, and in an environment that is ever-changing the toolkit can only facilitate to develop the foundational basis for effective compliance programmes. The start-ups must ensure improvisation and updating of compliance programme frameworks simultaneously while using this toolkit.

Who is this toolkit for?

Any start-up operating in India can use this toolkit to enhance its compliance. This toolkit cuts across various facets of business operations and therefore can be effective for any start-up. This toolkit is not sector specific and generally covers various sectors in which start-ups may operate. Both established as well as budding start-up can use this toolkit to strengthen their compliance program.

How to use the toolkit?

Start-ups may use this toolkit to develop their policy documents and frameworks for implementing effective compliance programmes. It will act as a guide to develop improved policies for good governance and implement effective social responsibility activities of the organisation in specific areas including but not limited to integrity, anti-bribery, risk management, anti-sexual harassment policy, gift policy, among others. This will also support sustainability of the organisational operations & ethically compliant business processes. The toolkit can be used by start-ups in assessing and revisiting (where necessary) their relationships with other organisations and in answering important questions related to integrity in business practices.

USES OF THE TOOLKIT

Developing Policy Documents & Frameworks	*Develop Improved Policies for Good Governance*	*Implement Effective Social Responsibility*	*Ethically Compliant Business Processes*	*Assessing Organisational Relationships*
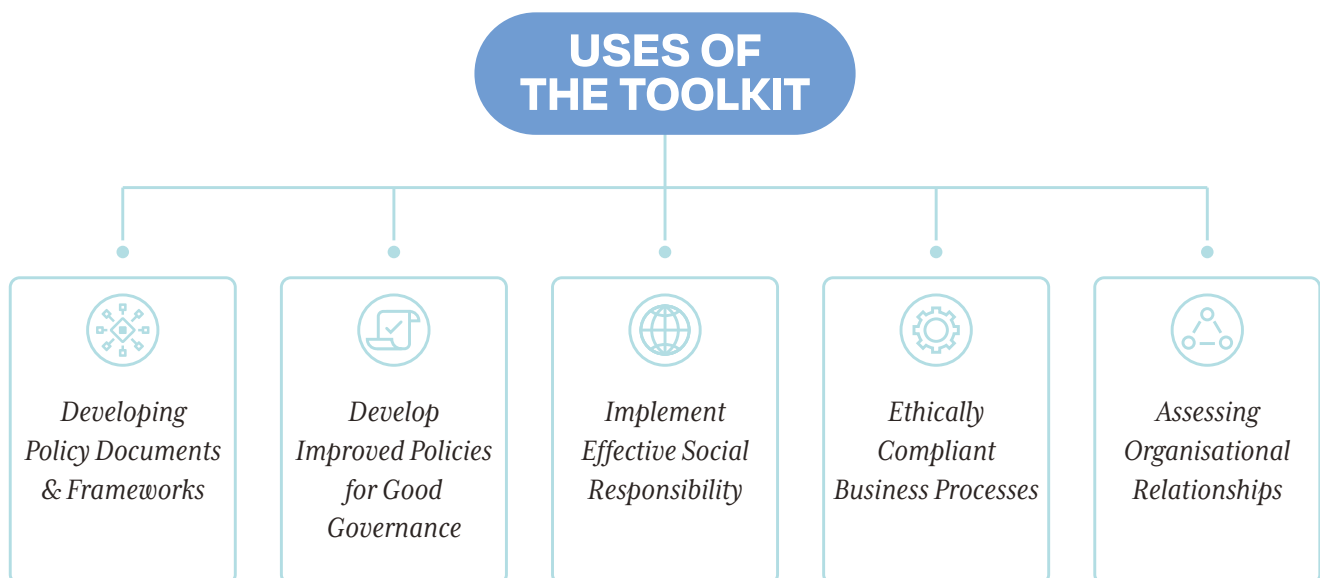
Data Collection

Data was collected through primary and secondary sources. Interaction and interviews with selected start-ups, incubators, compliance officers and trainers were used as primary source of data collection. Surveys were conducted to receive feedback and insight into the present start-up ecosystem and the impediments start-ups face in various processes thereof.

The secondary sources of data collection included 'but were not limited to' official websites of different ministries and public-sector enterprises, and the models based on recommendations of various International Organisations like TI, UNGC, OECD, UNDP etc.

Limitation

The toolkit does not delve into each and every aspect of business compliance and therefore detailed legal compliance procedures under sector specific laws. Rather, it will help start-ups to start their compliance journey at a very early stage enabling them to further refinement of their compliance policy as per the mandate of the Government of India. Integrity sits at the core of the work of the GIZ and this project specifically.

Thus, only integrity aspects of the various laws referred in this report have been studied to keep the toolkit brief enough. The laws are continuously changing and therefore, the start-ups must update themselves of the changing legal regime and adapt to these.

Indian Regulatory Framework and Best Practices

Corruption can take many forms such as bribery, conflict of interest, nepotism etc. In many cases, corruption is not visible, especially where it is systemic; it becomes an accepted norm to pay bribes for any work. It may also come in the form of facilitation payments, charity, gifts etc. The Indian anti-corruption law, The Prevention of Corruption Act, 1988 does not define corruption.

The most accepted definition of corruption is, abuse of power for personal gain.[1] The law of the land is paramount, and, compliance with the legal framework is mandatory. In India there are various laws for protecting the citizens from the ill-effects of corruption, creating a level-playing field for enterprises, ensure fair competition in the markets, and improve governance and transparency.

In the following section of this toolkit, the legal framework to promote transparency and governance in India is discussed, followed by the good practices adopted by the government through various initiatives.

Prevention of Corruption Act, 1988

The Prevention of Corruption Act, 1988 is the primary legislation in India pertaining to anti-corruption in India. The most recent amendment to this legislation occurred in 2018 with an aim to bring the current anti-corruption legal framework of the country in consonance with the practices laid down by the UNCAC (United Nations Convention Against Corruption). The amended Act has brought within its ambit the private sector enterprises by including giving of bribe as an offence. Further, Section 9, specifically delineates the liability of commercial organisations.

Against this background, it is clear that start-ups must develop procedures and compliance management systems that deal with the issues of poor governance to better cater to the needs of the consumers and improve the mode of doing business.

Key features of the Prevention of Corruption (Amendment) Act, 2018 [2]

01
A new term "undue advantage" was defined to mean any gratification, other than legal remuneration, not being limited to gratifications measurable in monetary terms.

02
Provides for completion of trial for corruption cases by a special judge within a period of two years from the date of filing of case.

Prevention of Corruption (Amendment) Act, 2018

03
Section 8 makes the bribe giver liable to prosecution under this act.

04
Liability of Commercial Organisations has been introduced. Commercial Organisations also include business entities formed outside India but carrying out business within India.

Right to Information Act, 2005

The Right to Information (RTI) as a tool for empowering citizens and bringing governance and transparency in the system, was statutorily established in the year 2005 under the Right to Information Act, 2005. Though RTI does not directly eliminate the possibility of corruption in various agencies, it helps to ensure transparency in governmental operations. This further helps in making citizens more informed, while also to ensure that properly informed citizens will foster the overall goal of a democratic society and good

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[1] Transparency International

[2] Prevention of Corruption (Amendment) Act, 2018 available at: https://www.egazette.nic.in/writereaddata/2018/187644.pdf.

governance in all aspects of society. In case any public official refuses to share information (public documents) the start-ups can use RTI as a tool to demand information from the governmental authorities e.g. electricity department, ministries, public sector undertakings etc., or can use it as a tool to ensure that their paperwork in dealing with the government is complete, or find out about the missing documents/criteria and work on it accordingly.

Anti-Corruption Ombudsman – The Lokpal

The Lokpal is established under the Lokpal and Lokayuktas Act 2013 to inquire and investigate into allegations of corruption against public functionaries who fall within the scope and ambit of the above Act.[3]

It is vested with the power of search and seizure and also powers under the Civil Procedure Code for the purpose of conducting preliminary inquiry & investigation and power of attachment of assets and taking other steps for eradication of corruption. If start-ups face corruption-related issues while dealing with the central government officials or central public sector undertakings, complaints can be made directly with the Lokpals.

In the case of state government officials as well as state-level undertakings, start-ups can approach the office of state's Lokayuktas.

Whistle-blower Protection Act, 2014 [4]

The Act is applicable to the public sector and Governmental employees. The framework thereof can be a guiding principle for start-ups to develop tailored whistle-blower protection mechanism.

Key Features of Whistle-Blower Protection Act, 2014

Public interest disclosure to competent authorities

Appeals to the High Court within six months

Strict punishment of imprisonment & fine against any person devolving the identity of the complainant/ whistle-blower

Annual report on part of the competent authority to disclose the status of the complaints filed and overall functioning of the provisions of the Act
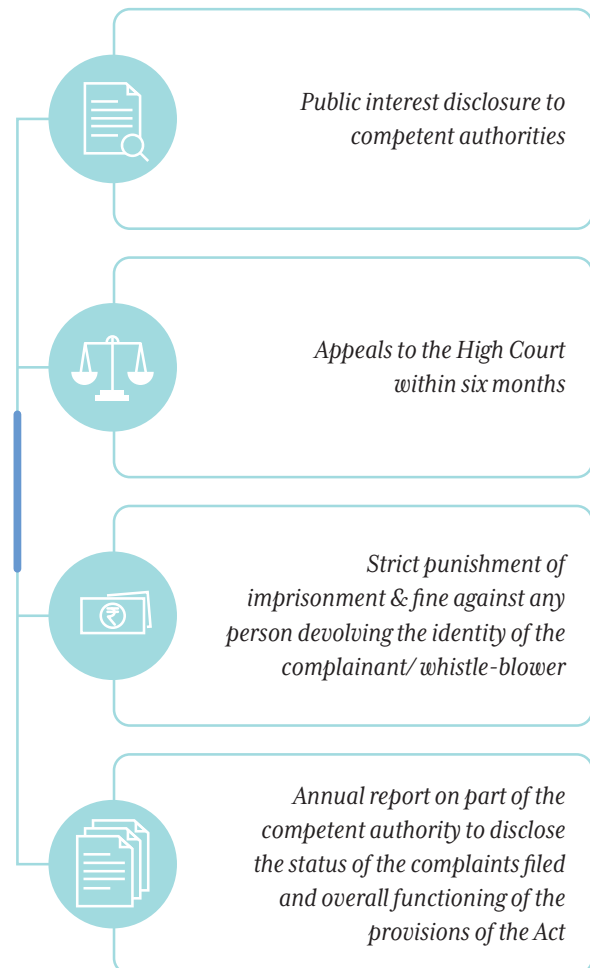
These legislations are enacted with the intent to improve governance in the country. Apart from these enactments, regulations issued by various bodies such as the Securities Exchange Board of India (SEBI), Reserve Bank of India (RBI), Department for Promotion of Industry and Internal Trade (DPIIT), etc. are applicable in promoting ethical and governance-based business practices.

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[3] http://www.lokpal.gov.in/

[4] The provisions of the Act are yet to be notified by the Government.

Good Practices on the Governance Front by the Government of India

Technological Initiatives

Technology plays a vital role in today's business world, including good governance practices. Technological approaches to tackling corruption and promoting transparency are most appealing.

Technology based solutions prevent the possibility of corruption by bypassing the middlemen and bureaucrats. This in turn empowers the citizens and help improve transparency in the system.

For example, petty corruption issues involved in issuing various certificates such as caste certificate, residential certificate, birth and death certificate have been almost abolished by introducing G2C (Government to Citizen) portals in various states for providing such services online.

Government to Business Online Portal

While applying for any government services/ licenses, new entrepreneurs and start-ups must look for G2B (Government to Businesses) online portals for such services. It minimises the personal interface thus reducing the opportunities/circumstances where the risk of payment of bribe/facilitation payment can arise.

The website www.startupindia.gov.in contains all related information and links to such G2B portals. One such portal is https://services.dipp.gov.in/lms/ which has been developed as a single window system to apply for Industrial Entrepreneurs Memorandum and Industrial License.

Government e-Marketplace (GeM)

One perfect example of use of technology to reduce corruption and increase transparency for businesses is the Government e-Marketplace (GeM portal, https://gem.gov.in/). GeM eliminates human interface in vendor registration, order placement and payment processing. It has reduced corruption in the public procurement sector to a great extent through appropriate use of technology.

Transparency through Digital Payments

Corrupt transactions are typically carried out through cash payments to make them
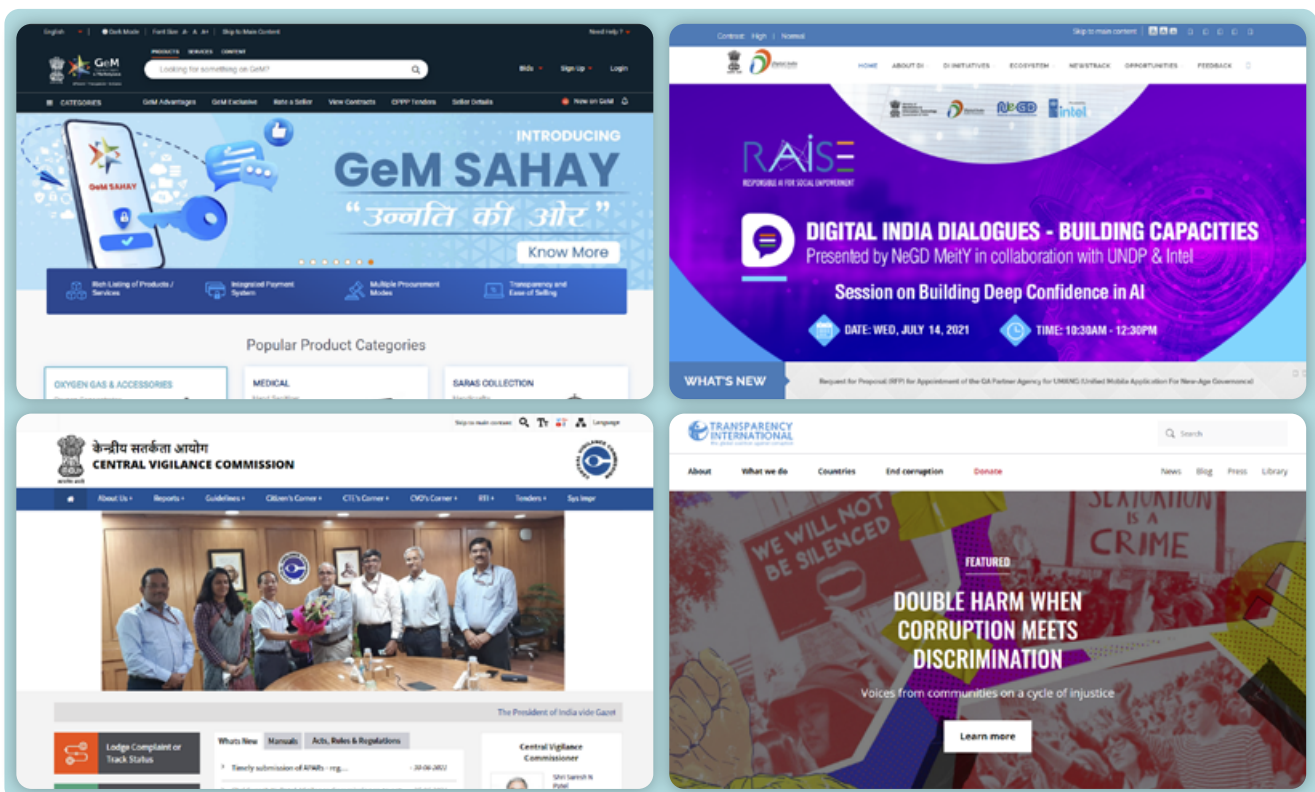
untraceable. Bribes to government officers are also usually paid in cash. When people do all their transactions through digital mode, all incoming and outgoing funds can be traced, thus reducing the risk of fraud and corruption.

Cashless transactions also eliminate the economic exploitation of lower tier staff by their seniors. For example, there have been various cases where it has been seen that employees receive less than the actual salary agreed upon, and the remaining part of the salary goes to contractors/senior employees. The direct cashless digital payment into the account of the labour/staff will eliminate this extortion.

Centralized Public Grievance Redress and Monitoring System (CPGRAMS)

CPGRAMS is another good example of use of technology to overcome the drawbacks of an opaque bureaucracy. It is a platform that primarily aims to enable submission of grievances by the aggrieved citizens from anywhere and anytime to Ministries/Departments/Organisations who scrutinize and take action for speedy and favourable redressal of these grievances. It also provides the option to show the status of one's complaint online, making citizens able to avoid the harassment faced in government offices in such complaints.

Policy Initiatives

In India, there are various policy initiatives to ensure governance and maintenance of the rule of law in doing business. However, various tools have also been developed throughout the world fostering the goals of transparency and good governance in the public and the private sector. Integrity Pacts, Citizen's Charter, and Right to

Information are three such tools that indirectly go a long way in ensuring good governance in various aspects of businesses.

Integrity Pact (IP)

IP is a tool that helps to ensure transparency and governance in public procurements. *An Integrity Pact is both a signed document and approach to public contracting which commits a contracting authority and bidders to comply with best practice and maximum transparency. A third actor, Independent External Monitor (IEM), monitors the process and commitments made. Monitors commit to maximum transparency and all monitoring reports and results are made available to the public regularly.*[5] Integrity pacts may not directly affect the level of transparency and governance but signing of IP puts into motion an institutionalised mechanism whereby, in case of mis-governance, complaints may be filed. Generally, IPs are under the oversight of Independent External Monitors appointed by Central Vigilance Commission (CVC) and therefore, the start-ups can approach these monitors in cases of deviation. The organisation "Transparency International" has provided for various resources related to the implementation of these IP and they can be accessed by clicking here.

Citizen Charter (CC)

The *"Citizen's Charters"* initiative *is a response to the quest for solving the problems which a citizen encounters, day in and day out, while dealing with organisations providing public services. The concept of Citizen's Charter enshrines the trust between the service provider and its users.*[6] Quality of services, choice with respect to availing services, standards of services being rendered, value of the services, accountability of the officials, and transparency

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[5] Integrity Pacts, Transparency International, available at - https://www.transparency.org/en/tool-integrity-pacts

[6] Citizen's Charters - A Handbook, Government of India, available at - https://goicharters.nic.in/public/upload/pdfs/DSF6gw.pdf

in the governmental operations lie at the centre of operationalising the citizens' charter. The CC empowers the citizens with respect to obtaining services from the government. The concept was first articulated and implemented in the United Kingdom by the Conservative Government of John Major in 1991 as a national programme with a simple aim: to continuously improve the quality of public services for the people of the country so that these services respond to the needs and wishes of the users.[7] The Government has developed a handbook for the implementation of CC and the same can be accessed here by the start-ups to avail public services.

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[7] Citizen's Charter, Government of India, available at - https://goicharters.nic.in/public/website/home

International Compliance Frameworks and Good Practices

In the current global business environment, compliance is an important element that start-ups need to be responsive to. Supported by various legal frameworks, all businesses, start-ups, or an established setup, must comply with compliance standards to participate in trading sustainably.

These compliances help in ensuring global competitiveness of the start-ups, sustainability of operations, and improving the global presence of the start-ups.

Global/International Compliance refers to obligations and commitments, locally, nationally and internationally. It is crucial for any company that wishes to operate (across borders).

• **Local Compliance in Every Location of the Enterprise:** Cross-border operations are common. This brings with it the responsibility to comply with the local laws. A start-up should develop policies, since its inception, which are globally resilient.

• **Compliance with International Laws, Regulations and Standards:** To enhance global competitiveness, start-ups can invest in compliance with the international standards and rules of international commerce.

Lack of globally accepted compliant systems may cause huge reputational damage to start-ups. Organisations may face penalties if they fail to meet the standards irrespective of the size and scale of their business. To manage these compliances, companies must make compliance an integral part of their operations, introduce strong governance processes, and appoint responsible staff and, if needed, appoint an international compliance partner.

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Commonly followed Global Compliance Structures

While laws differ across jurisdictions, there are some common regulations followed across the world. These compliances enhance governance in organisations and help in making the start-ups stronger on the governance front. This strength is translated into making the start-up more competitive and supporting its business, both at the national and international levels.

Some of the most crucial compliance areas, which may impact a business are –

- **Anti-Money Laundering Regulations (AML):** Anti-money laundering and counter-terrorism financing (AML/CTF) laws and regulations are globally applicable.

- **Tax Compliance:** In most jurisdictions, businesses must follow the local taxation regime. Furthermore, with the advancement of technology-based services, the nature of taxes has changed. Start-ups must develop compliance structures that are robust and confirm with the current trends in the business environment. The start-ups should have their domestic taxation documents clean and properly documented in conformity with local laws of the respective country. They must ensure payment of taxes on time, keep their tax structure updated as per the latest amendments in the taxation law.

- **Financial Reporting and Accounting Standards:** Many countries have now adopted International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS), which are an internationally standardised set of principles and rules for preparing and presenting financial reports. Though the use of these standards are increasing, countries such as the USA which are of significant interest for Indian businesses still follow Generally Accepted Accounting Principles or (GAAP).

- **Employee Entitlements:** In most countries, the law sets out a set of minimum entitlements for the employees. These mostly include the minimum wage, breaks, annual vacation leave, sick leave, medical benefits, among others. The start-ups must ensure that these standards are met to the extent possible. Most countries now have laws in place prohibiting discrimination on any ground.

These laws are often referred to as 'Equal Opportunity' laws. Start-ups need to develop policies that are neutral and augment equality. Slavery and exploitation of workers still exist, though the forms have changed, e.g., many developing countries are perceived as destinations for outsourcing because of cheap labour. The UK was the first country, in recent times, to implement an anti-slavery legislation. This law requires businesses to investigate, monitor and make sure that any form of slavery and worker exploitation is not part of their supply chain.

The UK's Modern Slavery Act, 2015 applies to businesses based or operating outside the UK. The International Labour Organization (ILO) Conventions cover a wide area of social and labour issues including basic human rights, minimum wages, industrial relations, employment policy, social dialogue, social security and other issues. [1]

- **Health and Safety Compliance:** Health and Safety (H & S) refers to the series of laws, regulations, and workplace procedures designed to protect the well-being of workers. H & S compliance is what a business has to do to stay in line with industry regulations, like Labor law, Occupational Health & Safety Advisory Services (OSHAS) and ISO 45001, to

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[1] https://www.ilo.org/global/lang--en/index.htm

protect its workers and the public. It's not just a moral obligation, it's also a legal obligation. Businesses that fail to comply are subject to inspections and punitive action as well as public scrutiny.[2]

• **Data Protection Laws:** With the emergence of data collection in cyberspace, global compliance for data protection have taken centre-stage. The European Union's General Data Protection Regulation (GDPR) requires that any business that controls or processes the personal data of EU customers adhere to a range of data security obligations and provide customers a range of data protection rights. The GDPR applies to both businesses based in the EU, and outside the EU that is doing business with EU partners.

• **Environmental Compliance:** The changes at the international level with respect to care and protection of the environment and the shift from developmental goals to sustainable goals have brought to focus the importance of environmental compliance. Start-ups must comply with the environmental regulations of the country and if their operations go beyond the national borders, they must comply with the necessary environmental regulations.

In India the environmental compliances are regulated by various statutes such as The Environment (Protection) Act 1986, The Air (Prevention and Control of Pollution) Act 1981 etc. and rules thereof. Internationally various instruments have been signed to ensure uniformity in environmental protection. [3]
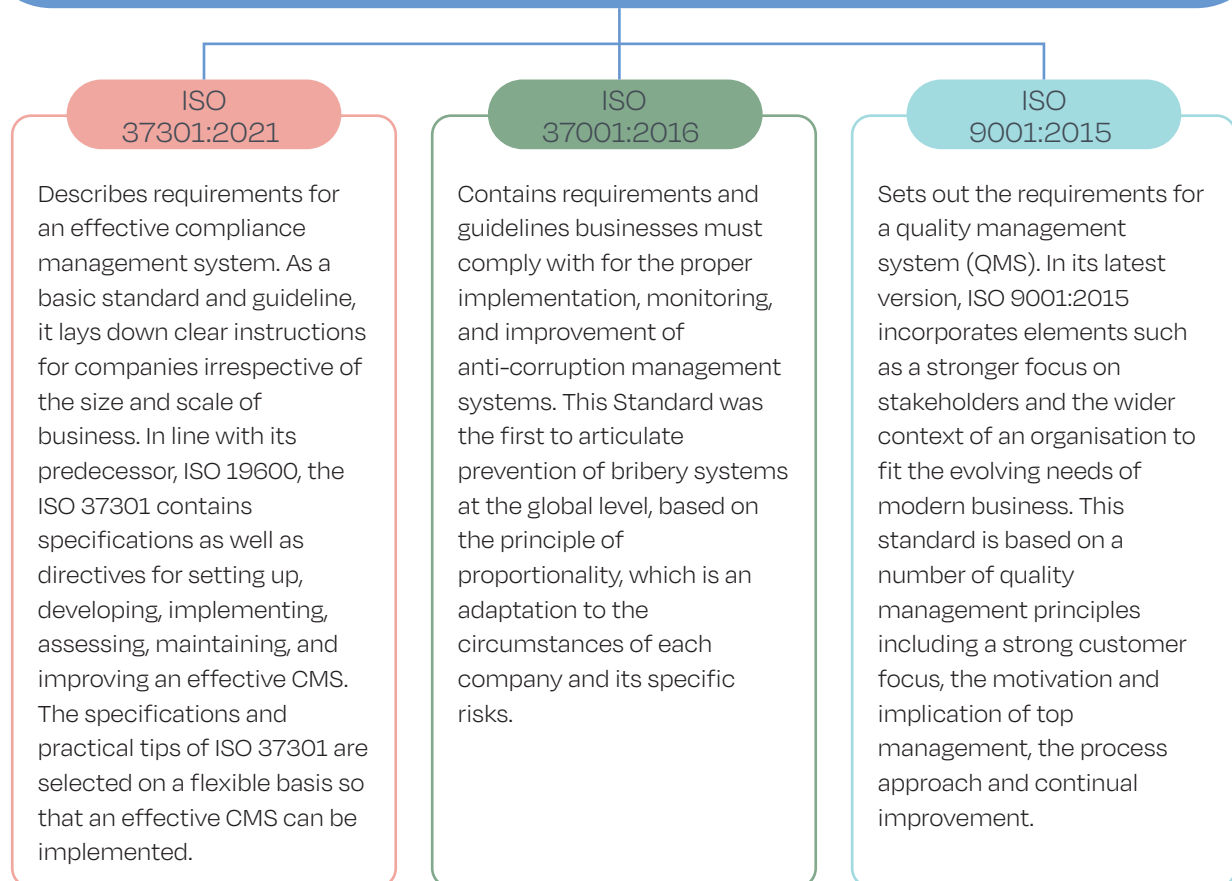
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[2] https://www.ehsinsight.com/blog/what-is-environmental-health-safety-ehs-compliance

[3] https://www.iloencyclopaedia.org/part-vii-86401/environmental-policy/item/744-international-environmental-conventions

Important International Certifications and Standards around Compliance Management Systems

One of the most widely used certification for businesses comes from the International Organisation for Standardization (ISO) that has created international standards of Compliance Management Systems applicable to all entities. The main certifications in the areas of the compliance management system (CMS) are as follows –

Important International Certifications & Standards around Compliance Management Systems

ISO 37301:2021

Describes requirements for an effective compliance management system. As a basic standard and guideline, it lays down clear instructions for companies irrespective of the size and scale of business. In line with its predecessor, ISO 19600, the ISO 37301 contains specifications as well as directives for setting up, developing, implementing, assessing, maintaining, and improving an effective CMS. The specifications and practical tips of ISO 37301 are selected on a flexible basis so that an effective CMS can be implemented.

ISO 37001:2016

Contains requirements and guidelines businesses must comply with for the proper implementation, monitoring, and improvement of anti-corruption management systems. This Standard was the first to articulate prevention of bribery systems at the global level, based on the principle of proportionality, which is an adaptation to the circumstances of each company and its specific risks.

ISO 9001:2015

Sets out the requirements for a quality management system (QMS). In its latest version, ISO 9001:2015 incorporates elements such as a stronger focus on stakeholders and the wider context of an organisation to fit the evolving needs of modern business. This standard is based on a number of quality management principles including a strong customer focus, the motivation and implication of top management, the process approach and continual improvement.

Good Practices: Global Compliance Management

There is no iron-clad mechanism for measuring compliance within business entities. As such, businesses must opt for methods that promote objectivity, increase efficiency and ensure transparency in all their operations and functions. To meet the global standard for compliance management, the businesses may consider the following steps:

- **Building Compliance into Business Processes:** Compliance should not be a standalone process but should be an integral part of the business operations. The needed checks and balances should be proactively installed and implemented.

- **Dedicated and Responsible Compliance Teams:** Businesses should ensure that they have a dedicated team to handle the compliance matters, and it is not a subsidiary function. Some regulations even call for having a dedicated Compliance Officer fully trained. It would be the responsibility of the Compliance Officer to oversee that requirement of the compliances are met with.

- **Governance:** In most businesses, the board of directors have ultimate oversight of the business operations. They need to act responsibly and put in place processes and prioritise compliance by setting up model code of conducts; sub-committees; independent working of the compliance teams; running assurance functions like risk management strategies and internal audits and have adequate allocation towards compliance functions.

- **Social Compliance:** Integrating Human Rights and ESG into International Regulatory Compliance. Over the past several years, businesses have considerably increased their focus on risks associated with environmental, social & governance issues, and human rights (ESG/HR) issues across their operations. This has led to a growing number of businesses creating dedicated ESG/HR compliance programs or management systems.

- **Certified Compliance Management System:** Having a certified compliance management system (CMS) in accordance with international standards like ISO 37301 always supports any business and helps bring consistency and clarity. It also increases the effectiveness and credibility of the business
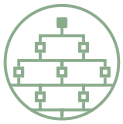
in the international market. Certification provides evidence about the credibility, offers security to the management, employees, and stakeholders.[4]

The issue of how to protect the well-being of the human resources employed by businesses remains a pressing call everywhere across the world. Identifying this as an important element for companies to operate, and the United Nations Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights (Guiding Principles) in June 2011. These Guiding Principles aim to address some of the negative impacts that may arise while clarifying the role of different players in ensuring human rights protection in business functions. In this regard, the Guiding Principles outline member states' duties to protect human rights, corporate responsibility and access to remedy for victims.

Apart from the UNGP guidelines, from the audit aspect, the Business and Human Rights International Standard for Certification (BHRISC 2011) is one of the world's first auditable standards for certification of human rights compliance by business entities. Based on the Guiding Principles and other major human rights laws, BHRISC 2011 contains a wide range of indicators for auditors to ascertain human rights compliance.

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[4] https://home.kpmg/de/en/home/insights/2021/05/new-standard-for-compliance-management-systems.html

Compliance Toolkit

Organisational Commitment

Gap Analysis & Risk Management

Defining the Framework

Communication of the Compliance Programme

Evaluation & Monitoring the Compliance Programme for improvement

Prelude

Any start-up in the contemporary regulatory and governance framework must conform not only with the compliances therein but must take certain proactive measures that help them gain better traction against the volatile and changing business environment.

Keeping this in mind and the changing mode of how profits are to be earned responsibly, it is important that today businesses take proactive measures to deal with these additional responsibilities so that they may have a more resilient operation and simultaneously become globally competitive.

There are few important components of compliant businesses that have emerged in the recent past and to which businesses must pay greater attention. On the one hand, we have the compliances which form part of the law of the land and are to be complied with as part of the checklist of the legal compliances. On the other hand, with the increase in the outreach of organisational operations, the entity must cater to other obligations which are in the form of aspirational standards in the business parlance. These aspirational standards are operating independently, or they may be part of the laws. Either way, the aspirational standards improve the governance within the organisation, and it also makes the start-ups more competitive.

The immediate impact of compliance with the aspirational standards is that they help in developing an intrinsic integrity culture within the organisation. These standards are generally related to the following aspects – Environment, Social, and Governance & Human Rights (ESG/HR).

The prime focus of the toolkit is on answering a few key questions – how to handle human rights issues in businesses more efficiently (with special reference to sexual harassment and labour issues), how to make the overall nature of the organisation more ethical and transparent, how to handle risks associated with poor governance and non-compliance, and how to hand-hold the organisational staff to deal with issues of poor governance. This toolkit will help start-ups developing a Compliance Programme that would cater to the needs of ethical businesses.

A. Organisational Commitment

In a start-up, the owners essentially reflect the commitment of the organisation towards responsible business practices. The start-ups are at an advantage of developing policies at the outset.

The start-ups should start developing the processes, but it can only be reflected by the commitment of the organisation. In the beginning, start-ups need not develop policies for each aspect of the compliance process. They can and must start with one of the aspects, develop the requisite framework and gradually encompass the various aspects that have been delineated in this toolkit.

The overall processes related to developing the policy documents (associated either with one of the aspects or all the aspects of governance) and other frameworks for establishing organisations which are compliance driven must begin at the inception. This will help in removing all the difficulties at a later point of time and improving the organisational functions by the time it reaches the threshold of enhancing its market presence.

The commitment of the organisation can be reflected from the policy documents and the procedures established in this regard. Apart from the policy documents, the commitment is also reflected in budget allocation for the purpose of specific requirements of good business practices and especially for conducting regular trainings. The commitment must be communicated to the employees and this communication should be made when any new employee joins the organisation.

Organisational affiliation and certification may also reflect the commitment and in that specific actions, points may need to be taken for showing the organisational commitment. One of the most acceptable ways of obtaining organisational certification is by complying with the standards issued by various organisations.

If the start-up so chooses, it may forego the requirements of external entities and certification thereof. The commitment can be reflected by putting information to this effect on their website. This is a self-governance-based approach and is self-regulatory. This form of commitment may appear allusive but is effective in terms of minimal costs involved.

The overall commitment of the leadership is further needed in –

- Ensuring establishment, implementation, maintenance, and review of sustainable business management systems, including policy and objectives.

- Ensuring sustainable business practices throughout the organisational processes.

- Deployment of adequate resources in this regard.

- Internal and external communication on the policy and importance of effectiveness and conformity with the policy and system developed thereof.

- Directing and supporting personnel contribution to the system effectiveness

- Supporting relevant management roles to demonstrate leadership in preventing and detecting risks related to organisational operations from different fronts.

- Encouraging use of reporting procedures for suspecting any deviant business practice.

- Ensuring no personnel suffer retaliation, discrimination, or disciplinary action for reporting in good faith or on the basis of reasonable belief of violation or suspected violation or for refusing to engage in unsustainable business practice even if such refusal can result in the organisation losing business (except where the individual participated in violation); and

- Periodically reporting to leadership and the risk owners on the content and operations and of allegations of serious or systematic bribery.

B. Gap Analysis and Risk Management

The start-ups before developing comprehensive governance frameworks must assess the existing compliance framework as is necessitated by the law of the land. Because the governance framework is integrated with the compliance framework, the assessment should try and integrate these two aspects for overall good governance in the start-up. To assess these gaps, they must fully understand the scope of their operations and the applicable laws, rules, regulations, compliance frameworks, standards, etc. The gap analysis should be carried out at the outset and should not be limited to the local laws and regulations. It must incorporate the assessment of international good practices and how they can be incorporated into the organisational compliance management programme. The gap analysis carried out at this stage, when a start-up starts its operation, must be distinguished from the risk management carried out by any enterprise during the lifetime of the organisation.

The gap analysis guides the start-up on how to develop the various processes to ensure good governance and minimise the risks of mis or poor governance. Compared to this, the risk management helps in effectively dealing with the established procedures, plugging the loopholes therein, improving the established framework based on changes in business environment.

Further, gap analysis need not be carried annually whereas risk management is an organisational function that must be carried out throughout the life of the organisation.

Risk Management as part of Governance Framework

Risk is generally defined as the *deviation from expected outcomes*[1]. Deviant outcomes can cause damage to the business of start-ups. They may also lead to litigation and negative impact on the resources of the start-up. Risks are part and parcel of business initiatives, and all risks are not adverse, and also it is not possible to address all risks; what is desired is categorisation of risk on the basis of their occurrence and also potential to cause damage to the organisation. Each and every risk must be categorised on the basis of its frequency and severability. Organisation must have a risk mitigation strategy to address them. There are ways to mitigate risks and in doing so, certain compliance processes may be established by the organisation. The most common way of mitigating risk is by the establishment of a risk management framework in the organisation. Standards and techniques have been devised which can be used by the start-ups to mitigate risks and one of the most used ISO Standard is the ISO 31000:2018.

Steps for Risk Management

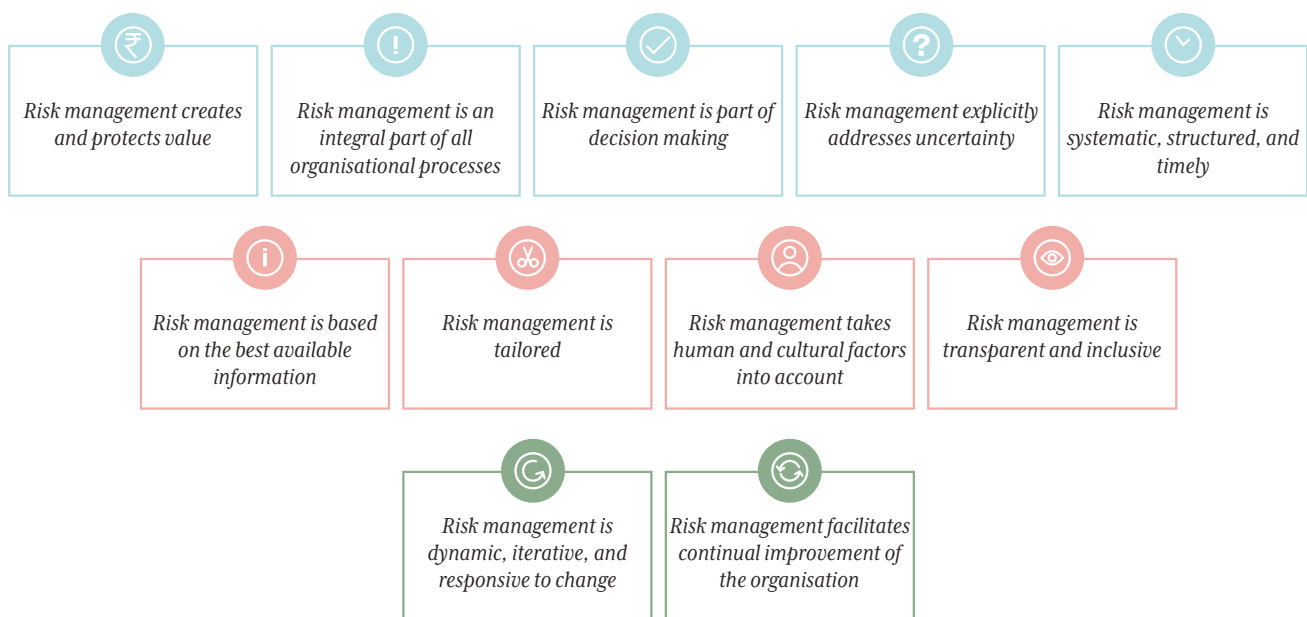| 01	02	03	04	05
Mandate & Commitment of the Organisation	*Designing & Establishing Framework.*	*Implementing the Framework*	*Monitoring & Reviewing the Framework*	*Continual Improvement of the Framework*

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[1] Available at: The risks of uncertainty | ACCA Qualification | Students | ACCA Global

The process above must be integrated into the overall compliance programme of the organisation. Therefore, the general commitment of the organisation must reflect and include the commitment of risk management. Similarly, the implementation, monitoring & evaluation, and continual improvement of the risk management framework must be integrated with the overall governance framework.

The designing and establishing a robust risk management framework requires specific point of action by the start-up. They can use the framework delineated below to establish Risk Management Framework in their organisation.

Principles Of Risk Management

Risk management creates and protects value	Risk management is an integral part of all organisational processes	Risk management is part of decision making	Risk management explicitly addresses uncertainty	Risk management is systematic, structured, and timely

Risk management is based on the best available information	Risk management is tailored	Risk management takes human and cultural factors into account	Risk management is transparent and inclusive

Risk management is dynamic, iterative, and responsive to change	Risk management facilitates continual improvement of the organisation

Assessing and Contextualising the Risk

The start-ups face risks on various fronts. The risks that a start-up might face may be because of corrupt business practices (in a bad governance environment) or due to violation of human rights (causing negative social impact) or violation of the legal norms or while dealing with third parties and external entities. Keeping this context in mind, the start-up may face issues on the following fronts and may give rise to subsequent risks. In terms of assessing the risk (which is one of the facets of risk assessment), the organisation must account the following accordingly.

Risks on the governance front

1. Corrupt business practices – A start-up can easily be a victim of or due to lack of proper knowledge indulge in corrupt practices.

Therefore, in the first instance, such possible risks need to be ascertained and plugged. Instances where corrupt business practices may be resorted to:

A start-up may resort to payment of illegitimate monetary amount to officials in an organisation to get the work done. This may happen in cases of clearances for business operations by a start-up from various governmental agencies.

Officials of a start-up for the purpose of retaining business of another organisation may offer financial or non-financial illegitimate benefits beyond the scope of the business transaction.

2. Laxity in compliance with the laws – A start-up can be immediately at risk, if it does not fulfil its regulatory compliances. In such circumstances, the authorities may legally impose restrictions

RISKS

GOVERNANCE

Corrupt Business Practices

Laxity in compliance with the laws

Protection of Consumer Interest

SOCIAL

Human rights violation as a risk

Discrimination in the form of gender inequality

Sexual harassment as a form of risk

Environmental Impacts as a form of risk

upon the operations of the start-up. Alternatively, some employees on the part of the Government or middlemen may exploit the start-up for its laxity by asking for financial or non-financial illegal gratification. Therefore, the organisation must ensure that it complies with the necessary regulatory compliance. Please refer to Annexure – 1 attached to this toolkit in this regard.

3. **Protection of Consumer Interest** – Consumer protection is a fundamental aspect of doing business today and therefore, the start-up must develop policies to protect the consumer interest.

Risks on social front

1. **Human rights violation as a risk** – Depending on the kind of operations and business it conducts; a start-up may be involved in human rights violation.

2. **Discrimination in the form of gender inequality** – The organisational staff may participate in some activities that are discriminatory and such activities, in general, can be deleterious for the organisation.

3. **Sexual harassment as a form of risk** – The start-up may easily be affected if sexual harassment is committed in the organisation. Furthermore, compliance with respect to prevention of sexual harassment at a workplace is now statutory and therefore, minimising risks on this front is also important for any organisation. Please refer to the Annexure 2 for further details.

4. **Environmental Impacts as a form of risk** – The start-ups may violate the environmental regulations thereby causing risk to organisational operations. Today, the consumer base is more informed, educated, and responsible. Therefore, failure on part of any organisation in fulfilling its environmental obligations may lead to reputational damage.

However, identifying these risks is not always an easy task and therefore, the organisation needs to make sure that it has effective tools in place to assess these risks and their impact. The action for minimising risks and showcasing commitment of the organisation can only be taken if the organisation is able to assess the risks effectively.

Otherwise, the organisational goal will never be achieved.

> **Case**
>
> *A start-up 'A' supplying components to automobile companies wants to assess the risk related to procurement –*
> - It must **assess the risk by discussing with the employees** and the practical difficulties they face while dealing with other companies.
> - The **results of assessment must be contextualised and categorised** in the following manner – If the difficulties are from the procuring organisation, it should be considered an external risk; If the risks arise because the procuring organisation does not have proper procurement procedure in place, it should be called governance based external risk, etc.
> - **Risk assessment should also account for the lacuna** at the policy-level in the start-up.
> - The start-up must evaluate its processes and how it deals with other companies to ensure that it takes the necessary course of action.

For a start-up, it may be difficult to ascertain the risks comprehensively and therefore, it may choose specific areas of risks to deal with. With the growth of the organisation comprehensive risk assessments maybe undertaken eventually. Please refer to Annexure – 3 attached to this toolkit.

For a start-up, assessing the risks must begin with contextualising the external and internal factors in which it operates.

How to assess risks?

- Group Discussion
- Personal Interviews
- Data Analysis
- Experts and Consultants
- Monitoring External Processes

Contextualising the risk

External Context

- Social, political, legal, regulatory, financial, technological, economic, market, international, national, and local factors.
- External stakeholders and relationship with other organisations.
- Global Competitiveness & ESG Commitments.
- Expectations of the funding organisation and its changing context – This external factor is specific for the needs of start-ups which are funded by other agencies.

Internal Context

- Policies and governance mechanism of the organisation.
- Capabilities, especially resource capabilities (monetary & human).
- Different operational standards adopted by the organisation.
- Extent of contractual relationships.

Instances – Risk Contextualisation

External Risks & Internal Risks (Combined)

During the Covid-19 pandemic a lot of work has shifted to virtual platforms. There might be some delay in committing to the deadlines of various compliances. In such situation, some officials may demand bribe in lieu of accepting the formalities associated with the compliances. Start-ups must prepare themselves to withstand such risks and must further ensure that they are aware about the latest regulations providing relaxation with respect to certain compliances.

Internal Risks

Start-ups need human resource to run its operations. Another risk that start-ups may face is thus related to employees who are habitually involved in corrupt business practices to achieve the targets. This could result in contaminating

others as well. Therefore, the start-ups should investigate the history of the prospective employee before hiring them. However, such investigation must ensure privacy of the prospective employee and any information collected as a part of investigation must be dealt with utmost secrecy.

External Risks

Sometimes, start-ups may face issues of corruption and misgovernance by entering into a business alliance with organisations that have an unethical work culture. Therefore, the start-ups must further ensure that the third parties with whom they are transacting the business or the third parties who represent their interests also reflect the overall ethical organisational approach.

The start-up, for better channelling of its resources, must assess risk categories by using factors such as impact of risk, pace of risk, frequency of risk, etc. Start-ups may use the following table to evaluate the impact of any risk and can develop tailored risk management processes.

	No Impact	Low Impact	Moderate Impact	Severe Impact	Disastrous	
Unlikely						*Plans to be made on needs basis strictly*
Infrequent						*Use of Data Analysis*
Lowly Frequent						*Use of Data Analysis & Monitoring External Processes*
Moderately Frequent						*Continuous discussion with Eployees & Board*
Frequent						*Continuous discussion with Eployees & Board*
	Plans to be made on needs basis strictly	*Use of Data Analysis & Monitoring External Processes*	*Use of Data Analysis & Monitoring External Processes*	*Continuous discussion with Eployees & Board*	*Continuous discussion with Eployees & Board*	*Assessing the Risks*

To ascertain frequency, the start-ups can use the following timeframe, or they can alternatively develop other timeframes (based on the context defined earlier) –

- **Unlikely** – Occurring once in 75-100 years. E.g. - pandemic.

- **Infrequent** – Occurring once in 25-75 years. E.g. – cycles of recession in the economy.

- **Lowly frequent** – Occurring once in 10-25 years. E.g. – changes in the political landscape of the country, changes in the government policy towards various sectors, etc.

- **Moderately frequent** – Occurring once in 3-10 years. E.g. – technological advancement, major legislative changes, etc.

- **Frequent** – Occurring during periods shorter than 3 years. E.g. – regulatory changes, employee changes and HR related issues, third party related challenges, etc.
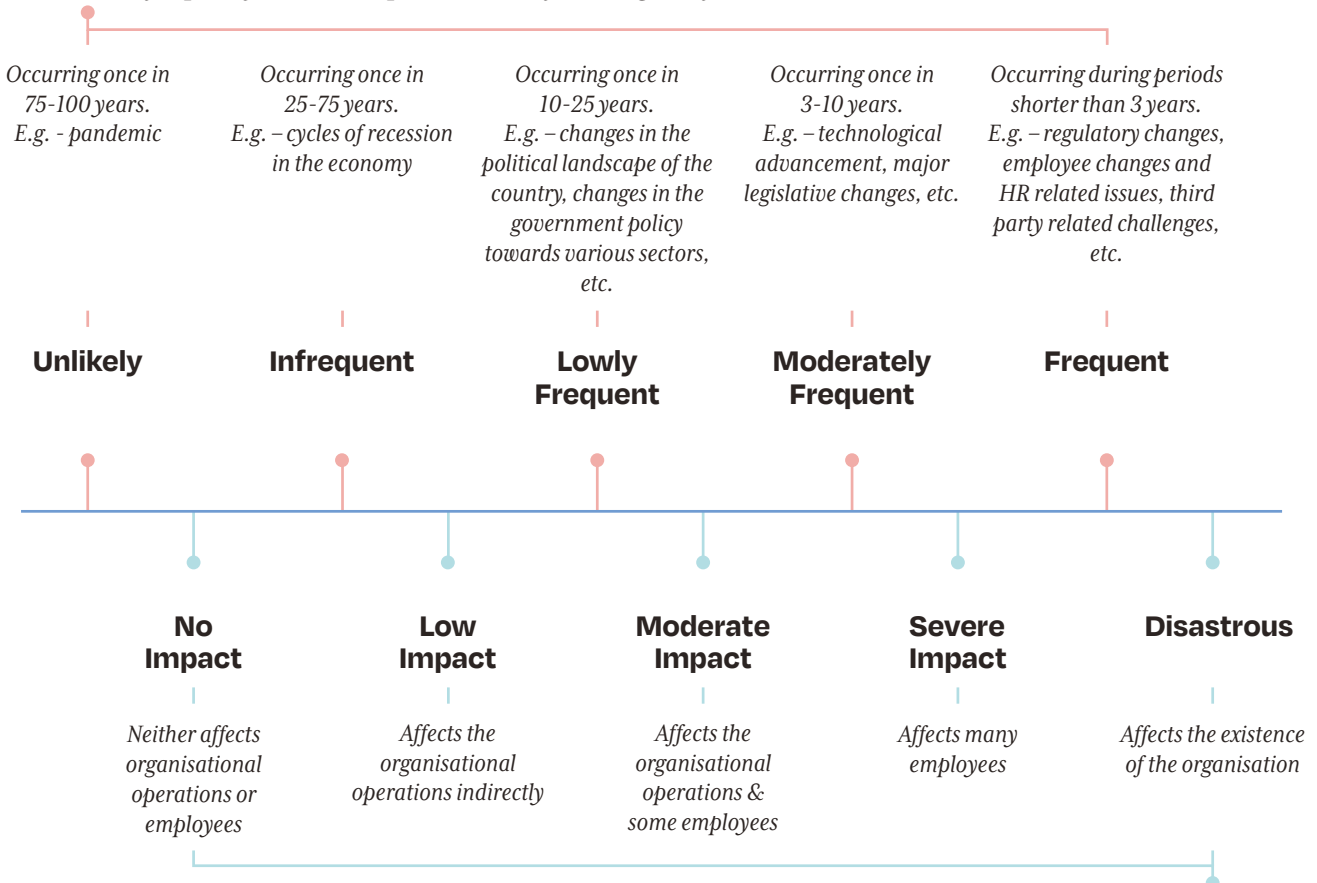
To ascertain the impact the following categorisation can be used –

- **No impact** – Neither affects organisational operations or employees.

- **Low impact** – Affects the organisational operations indirectly.

- **Moderate impact** – Affects the organisational operations and some employees.

- **Severe impact** – Affects many employees.

- **Disastrous** – Affects the existence of the organisation.

Instances – Risk Categorisation

1. Regulatory changes and the risks that come with the regulatory changes are generally bound by time and are to be implemented within specific timeframe. Therefore, they can be regarded as risks which affect the organisation at a higher speed than other types of risks.

To ascertain frequency, the start-ups can use the following timeframe,

Unlikely	Infrequent	Lowly Frequent	Moderately Frequent	Frequent
Occurring once in 75-100 years. E.g. - pandemic	*Occurring once in 25-75 years. E.g. – cycles of recession in the economy*	*Occurring once in 10-25 years. E.g. – changes in the political landscape of the country, changes in the government policy towards various sectors, etc.*	*Occurring once in 3-10 years. E.g. – technological advancement, major legislative changes, etc.*	*Occurring during periods shorter than 3 years. E.g. – regulatory changes, employee changes and HR related issues, third party related challenges, etc.*

No Impact	Low Impact	Moderate Impact	Severe Impact	Disastrous
Neither affects organisational operations or employees	*Affects the organisational operations indirectly*	*Affects the organisational operations & some employees*	*Affects many employees*	*Affects the existence of the organisation*

To ascertain the impact the above framework may be used

As per the evaluation table above, these risks can be assessed as under –

    a. They are risks of severe impact because, non-compliance with laws may lead to severe penalty.

    b. These risks are moderately frequent.

Therefore, the start-up must take the necessary action and categorise this risk as **Risk of Severe Impact and Moderately Frequent**. These risks can be mitigated by allocating resources bi- or tri-annually (once in two or three years).

2. Registration and processes thereof are one-time investment for start-up. Therefore, any risks associated thereof are less frequent risks and their mitigation techniques must be accordingly devised by the organisation.

As per the evaluation table above, these risks can be assessed as under –

    a. They are risks of low frequency.

    b. The companies be severely impacted because of such risks.

Therefore, the start-up must take the necessary action and categorise this risk as **Risk of Severe Impact and Lowly Frequent**.

3. A start-up where employees indulge in unethical business practices may bring disrepute to the organisation. Further, as per the current legal framework the private entities involved in giving bribe can also be prosecuted. These risks may have huge impact on the start-up and therefore, the start-up must categorise them as risks of high impact and intensity.

As per the evaluation table above, these risks can be assessed as under –

    a. They are risks of high frequency.

    b. The impact of such practices can prove to be disastrous for start-ups.

Therefore, the start-up must take the necessary action and categorise this risk as **Disastrously Frequent Risk**. Immediate action must be taken in this regard. Further, these risks can only be minimised by yearly review and monitoring of the compliance management framework of the organisation.
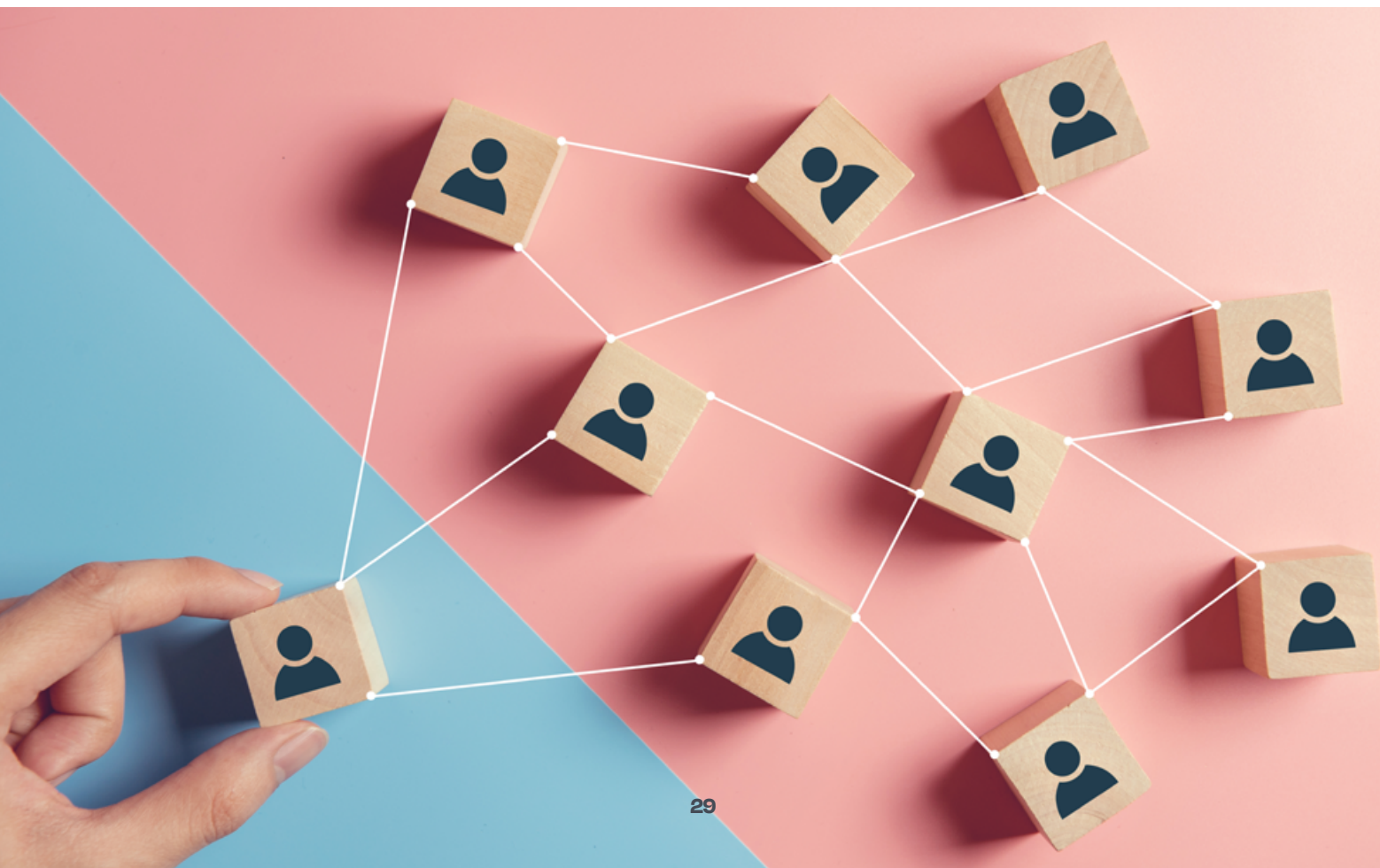
Who's Who – Accountability Framework for Risks

The compliance programme is based on ownership. Officers in respective departments may be responsible for ownership of compliance requirements arising from their department. However, if start-ups comprise only few members then the board should be considered responsible for all compliances associated with organisational operations.

It must be noted that even small start-ups must decide who the risk owners are. Lack of this definition might affect the organisation negatively and disallow any possibility of accountability. Risk owners will fulfil two functions – first, the organisations can easily hold accountability and second, the risk owners will be responsible in their specific domain thereby defining whom to approach in any instance of risk faced by an employee.

However, keeping in mind the limited resources that start-ups have they may task the responsibility of risk management with only one or two employees.

Financial Risks	Financial Officer/ Auditors.
Cultural and Human Resource Risks	HR Manager.
Regulatory Risks	Board of Directors/ Owner of Start-ups.
Environmental Risks	Board of Directors/ Owner of Start-ups.
Technological Risks	Chief Operating Officer.
Other Risks	Board of Directors/ Owner of Start-ups.

How to develop the policy document?

- Discuss the policy with the HR.

- Discuss with the staff.

- Take external help and consult, if necessary.

- Keep the policy simple, clear, customised to your needs, and based on good practices in the sector.

- Define and publicise the contact persons and risk owners.

- Keep the policy brief.

- Periodically review the policies and update where needed.

Procedures for Communicating Risks

Framing the policy is the first step towards achieving the organisational goals. The actual translation of the policies can only manifest if clear procedures are prescribed. Therefore, the various policies must be supported by clear procedural guidelines in this regard. Procedural mandate becomes important because it is only through proper guidelines that employees know what authorities they can reach for redressal when they face issues. In cases of illegitimate or violative business practices, bribery, sexual harassment, violation of human rights, etc. the relevance of procedures and applicable framework cannot be emphasised enough. Therefore, start-ups must invest resources in the developing procedures for realising the policy and organisational goals.

C. Defining the Framework

Once the commitment has been developed and risks assessed, in order to cover the aspects of social responsibility and good governance, the next step for any organisation is to develop policy documents that define the organisational objectives, delegate specific functions to specific departments or personnel, and allocate resources for effectively carrying out the functions thereof.

Policy documents help the organisation in giving direction to the overall organisational operations, determining what are the objectives of the organisation, giving a clear indication of the organisation's intent and also provide a way forward for the employees to take action as per the policy-developed. The policy must cover some of the basic aspects of the social and governance-based responsibilities. The policy document also clearly sets the commitment of the organisation, thereby assuring employees of the commitment of the top-managerial personnel about the social and good governance goals of the organisation.

The policies that any start-up must develop are –

- Policy to deal with Corruption
- Policy against sexual harassment
- Policy to minimise risks
- Policy on conflict of interest

The policy document will thus help in developing the organisational viewpoint and context and the employees' actions will manifest themselves within the realm of the outlined policy.

The policies also ensure uniform conduct and give clarity to both, the employees and other stakeholders, interacting with the organisation. In the absence of such policies, employees may take actions as they deem fit and it may be difficult for the organisation to hold accountability of the staff. Similarly, it would lack clarity with respect to the organisational approach, leading to discrediting the overall integrity of the organisation.

POLICY FRAMEWORK – (HOW TO DEVELOP POLICY FOR YOUR START-UP)

- **Define corruption** – Abuse of entrusted power for personal gain[1].
  A zero-tolerance approach is the bed rock of organisational commitment and therefore, the policy document must reflect that commitment.
- **Determine the policy on gifts.** [2]
  The Gift Policy must include the following aspects and maybe developed accordingly –

1. Giving Gifts –

a. Gifts must only be given in cases –
  i. Where the receiving organisational policy so permits and should confirm with the restrictions therein.
  ii. Where the receiving entity does not have such policy, then the policy of our organisations shall apply.
  iii. Where the gift does not –
    - create binding obligation;
    - violate the law of the land;
    - the gift does not create a preferential treatment;
    - bear non-transparency;
    - create unreasonable business practice; and
    - appear to be disproportionate.

  iv. Where the individual and other officials involved in a transaction would generally be conferred a benefit in the nature of gift in the general course of business and not for conferring benefit related to business that is beyond the scope of legitimate business transaction through direct transaction between parties or through acquaintances.
b. Gifts must not be given where it violates explicitly or implicitly the tenets prescribed above and where it is unreasonable to the common permissible transactions in the course of business.

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[1] Transparency International.

[2] https://www.antibriberyguidance.org/guidance/9-gifts-hospitality

2. Receiving Gifts –

a. All forms of gifts are prohibited for the employees of the organisation.

b. Any gift, if as per the giving entity's organisational policy is inevitable would directly go to the employee welfare fund, if it is a monetary contribution, or to the store of the organisation based on the framework below.

c. The organisation shall develop a Gift Store where all tangible gifts, apart from monetary gifts, shall be stored by the company. Retaining gifts would be considered a violation of the organisational policy and disciplinary action may be taken against the concerned employee.

d. Lawful reimbursements made to the employees or the persons associated with a transaction for genuine expenses such as food, travel, accommodation, etc. shall not be prohibited within the gift policy and shall not be considered a gift.

- **Define the acts of harassment** – "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

  - physical contact and advances; or
  - a demand or request for sexual favours; or
  - making sexually coloured remarks; or
  - showing pornography; or
  - any other unwelcome physical, verbal or non-verbal conduct of sexual nature; [3]

  - Keep the policy gender-neutral
  - Comply with the laws and provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
  - Make a committee for prevention of all forms of sexual harassment. [4]

Dealing with the issues of Sexual Harassment – Internal Complaints Committee

The establishment of an Internal Complaints Committee (ICC) is a statutory requirement and therefore, the start-ups must fulfil the requirement. This will not only help them in dealing with the risks of sexual harassment at the workplace, but also help in plugging any risk associated with non-compliance. The statute prescribes protection of women at their workplace. However, for start-ups to become globally competitive, they must develop policies which are gender-neutral and also protect the interests of every gender. This should be reflected in the constitution of the ICC. Please refer to the Annexure – 2 on POSH attached with this toolkit.

Define the risk management policy –

- Define the risk owners;

- Assess the non-financial risks;

- Departmental risks may be delineated and action taken accordingly for each such risk;

- Financial risks should be separated from the non-financial risks which are primarily associated with the social and good governance framework of the organisation.

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[3] The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 Section 2(n).

[4] A detailed discussion is further under the Definition, Delegation, and Allocation aspect of this Toolkit.
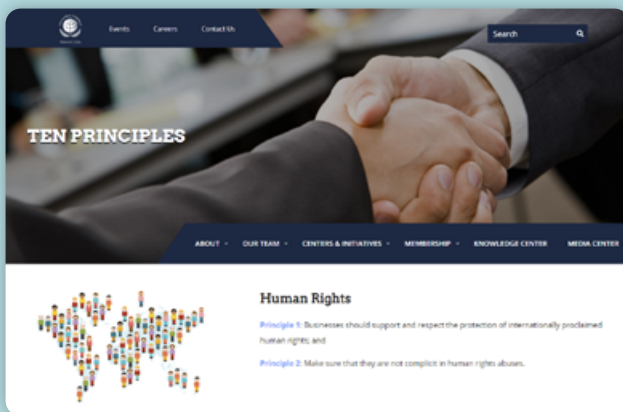
Conflict of Interest Policy –

- Define conflict of interest;

- Minimise or eliminate the possibility of favouritism;

- Disclose the conflicts;

- Decide the employment on merits, not nepotism.

Laws, Acts & Regulations to be taken care of while framing compliance policy for Start-ups

- Prevention of Corruption Act, 1988 along with the amendment act 2018

- Prevention of Money Laundering Act, 2002

- Companies Act, 2013

- Competition Act, 2002

- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 commonly known as POSH Act

- Labour Codes
  - Code on Wages, 2019
  - Industrial Relations Code, 2020
  - Code on Social Security, 2020
  - Occupational Safety, Health and Working Conditions Code, 2020
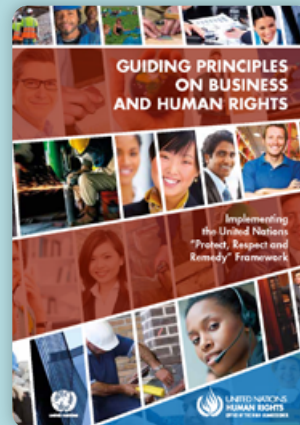
Adopting Frameworks – Some Global Models

UN Global Compact
10 Guiding Principles for Businesses
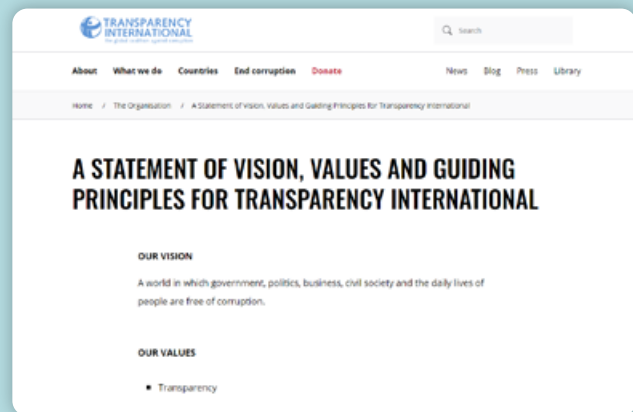
Guiding Principles for
Transparency International

10 Anti-Corruption
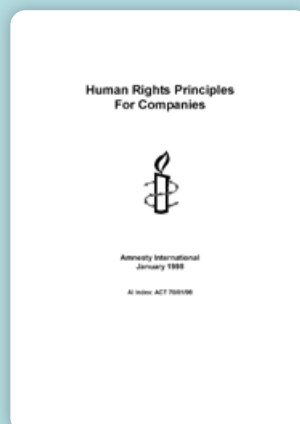Principles for State-owned
Enterprises

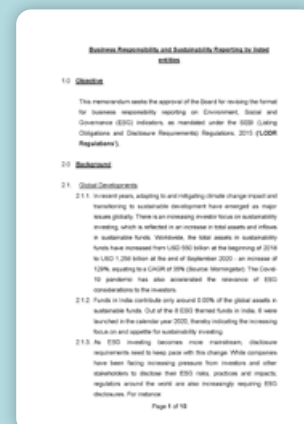Guiding Principles on
Business and Human Rights

Conflict of Interest Policy
of Cipla

Human Rights Principles
for Companies by Amnesty
International

SEBI Responsibility and
Sustainability Reporting by
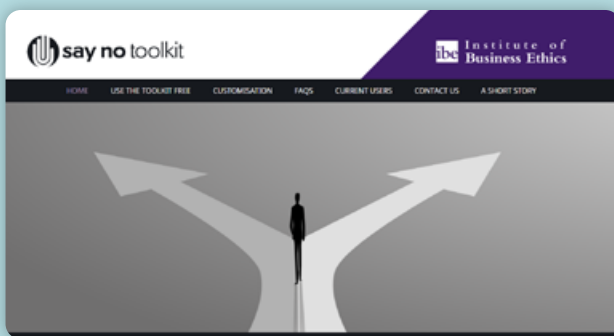Companies

Training and resources on Compliances

Some of the standard training programs/courses/lectures that can be helpful for start-ups–

Anti-Corruption Guidance

Doing Business Without Bribery Training Module

Institute of Business Ethics – Say No Toolkit

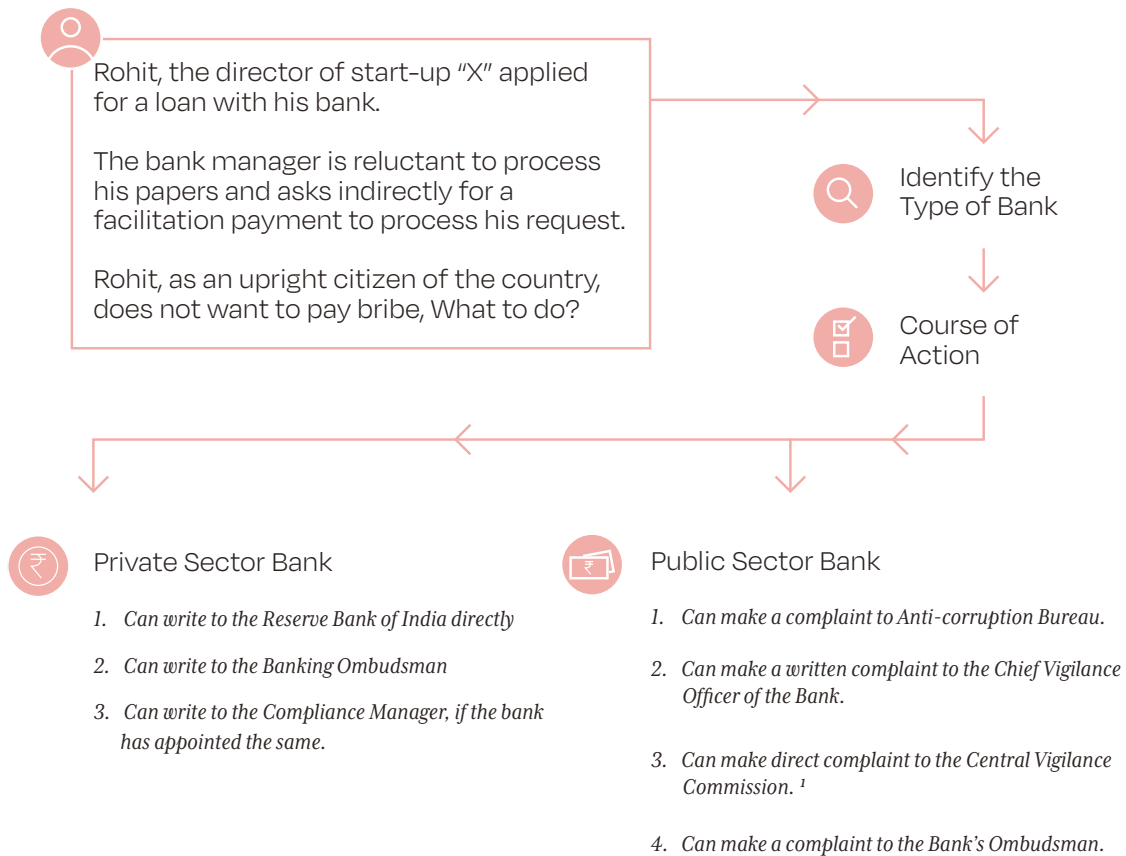
Corruption prevention to foster small and medium-sized (unodc.org)

Anti-Corruption Ethics and Compliance Programmes – UNODC

Some Scenario-based Examples –
Identifying solutions to Specific Problems

Rohit, the director of start-up "X" applied for a loan with his bank.

The bank manager is reluctant to process his papers and asks indirectly for a facilitation payment to process his request.

Rohit, as an upright citizen of the country, does not want to pay bribe, What to do?

Identify the Type of Bank

Course of Action

Private Sector Bank

1. Can write to the Reserve Bank of India directly

2. Can write to the Banking Ombudsman

3. Can write to the Compliance Manager, if the bank has appointed the same.

Public Sector Bank

1. Can make a complaint to Anti-corruption Bureau.

2. Can make a written complaint to the Chief Vigilance Officer of the Bank.

3. Can make direct complaint to the Central Vigilance Commission. [1]

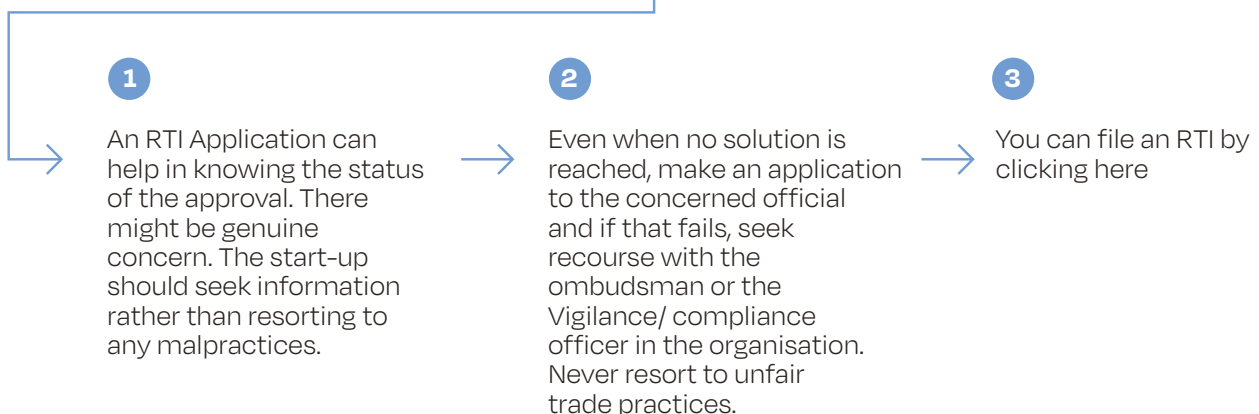4. Can make a complaint to the Bank's Ombudsman.

A start-up company "X" establishes a small manufacturing plant in the state of U.P. and applies for electricity connection.

A huge amount of time has elapsed and after regular follow-up with the electricity department, the start-up is not receiving any positive response. The concerned officer was just buying time and gives excuses such as defect in application etc. Middlemen approach the Director of the start-up company and offer their services to get the work done, but demand exuberant fees .
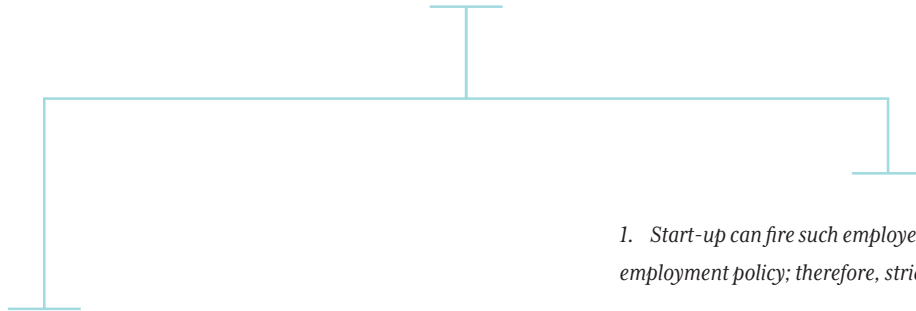
What should one do in such a situation?

1

An RTI Application can help in knowing the status of the approval. There might be genuine concern. The start-up should seek information rather than resorting to any malpractices.

2

Even when no solution is reached, make an application to the concerned official and if that fails, seek recourse with the ombudsman or the Vigilance/ compliance officer in the organisation. Never resort to unfair trade practices.

3

You can file an RTI by clicking here

[1] https://cvc.gov.in/?q=citizens-corner/complaint-handling-policy

Your employee offers a bribe or has given a bribe.

NOW WHAT?

Your start-up can be held liable for such practices on the part of your employee. The relevant provisions are under Prevention of Corruption (Amendment) Act, 2018.

1.   Start-up can fire such employees, but based on the employment policy; therefore, strict policies are important.

2.   Start-up may retain the employee and penalise the employee.

3.   Start-up must bear the brunt of regular legal fine, if any and must never cover one instance of bribe by bribing other officials.

4.   Start-up must establish an effective compliance management system to proactively prevent future violations.

How to avoid Bribe

Demands of bribe are a very common problem faced by most of the start-ups by either a public official or one of the employees/associations of their business partners. It is very difficult for a new entrepreneur to directly say no to the bribe.

The system can only be changed by collective efforts. But the initial stages of a start-up, it is better not to directly say "no" and find out a way to deny bribes. It will depend on the specific situation. It should be in a way that maintains good relationship while also promoting ethical business practices.

Conflict of Interest (CoI)

Scenario – 01 (CoI)

A person "X" applied for a job in a start-up where one of his/her relative "Y" works and that relative "Y" comes out to be a member of the HR team. The relative "Y" while taking decision on the selection of candidates are in a position of Conflict of Interest where he/she must put the company's interest above his/her personal interest.

Scenario – 02 (CoI)

A person "X" applied for a tender floated by a company where one of his/her relative "Y" is a member of the Purchase Committee. If Y is involved in the final decision-making then there is a conflict of interest scenario.

Scenario – 03 (No CoI)

A woman entrepreneur "X" working with the company of her brother B and other relatives for various operations of her company. This is not a conflict of interest. However, if she prefers her relatives over other deserving companies/ employees, it would be a case of CoI.

Course of Action in such conflicting interests

1. Such businesses are not provided they are conducted at arm's length distance.

2. Disclosure of conflict of interest and other related information is fundamental.

3. Businesses/Contracts should be allocated based on merits.

4. Possibility of favouritism maybe eliminated by eliminating the Board Member.

5. Employees and Departmental Heads must reveal any possible conflict of interest.

D. Communication and Implementation of the Policy Framework

In most instances, the policies and procedures for compliance do not become an integral part of the organisational function and operations. The commitment to compliance and ethics should flow from the top. It is the responsibility of the top management and the responsibility of the risk owners to ensure that these policies not only see the light of the day but also translate into effective procedures setting example for other organisations. One of the most fundamental steps to furthering this objective of making the policies a part of organisational operations is by communicating the policies to various stakeholders and entities with which the business interacts.

The communication of these policies can be processed through various channels discussed in the latter part of this section. Further, for the employees of the start-up, training is crucial. Training ensures that the organisational goals are reinforced in the minds of the staff, and they conform with the same while dealing with any person, within or outside the organisation. Such training also help in streamlining the processes and uniformity in actions taken by the employees. The clear communication and training further help in fixing accountability in case there is significant deviation from the code of conduct or the organisational policy. In the alternative, it is through these training that start-ups will learn about the problems faced by their external as well as internal stakeholders and subsequently improvise the existing modus operandi.

Communication through Information & Communication Technology (ICT)

With the advancement of ICT, one of the easiest ways, to reach out to a large audience is by placing the policy documents in the public domain and giving information about the compliance programme framework through the website of the start-up. This helps in reaching out to multiple audience without the trouble of resource allocation, because the information is then only a click away. The following procedure of dissemination of policies can be used along with communication using ICT.

Communication by placing check-points

For the external stakeholders and the entities that the start-up transacts with, checklists can be developed and used by the responsible personnel to assess the overall nature of business. The checklist may include inspections by start-ups to assess the ground reality of their business operations, especially the supply-chain partners. Further, sales and purchase policies may be adopted where there is clear demarcation of the anti-corruption policy, compliance with the ESG framework, among others.

The checklist may include the following component

Code of Conduct Framework developed by the vendor.

Zero Tolerance Policy on bribery, sexual harassment, corruption, etc.

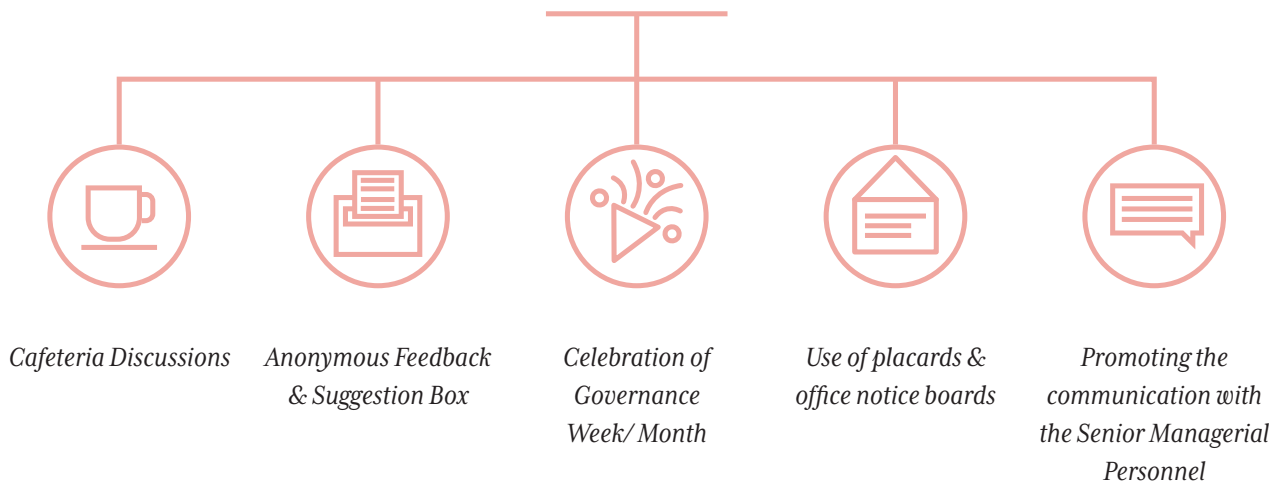*Commitment by becoming part of integrity groups and organisations.*

Any initiative by the start-up for promoting governance.

Communication by training

Allocation of resources for training might be difficult and financially straining for the start-ups. Therefore, start-ups must evolve its process of training and allocate resources carefully. The first idea may be manifested by making training a regular cafeteria conversation and keeping it informal, instead of specific training exercise by calling experts. The second idea can be manifested by identifying the staff who require specific training and only organising limited training sessions for the same.

Such specific training exercises can be successful only if the needs assessment and the risk assessment are effectively carried out by the organisation. The communication process must not be an isolated event but innovative and continuous.

**Some of the ways of effective
& innovative communication,
that start-ups may use, are :**

Cafeteria Discussions   *Anonymous Feedback & Suggestion Box*   *Celebration of Governance Week/ Month*   *Use of placards & office notice boards*   *Promoting the communication with the Senior Managerial Personnel*

Communicating with Business Partners

Communication with the business partners can take place by way of a code of conduct specially tailored for the entities with which the start-up transacts. The start-up may find it difficult (sometimes) to ensure compliance with the code of conduct and in such circumstances, the audit will help in assessing the level of non-compliance.

In the alternative, the start-up may take open feedback from the partner organisations to identify the non-compliances from within the organisation. This will also help the start-up in developing and improvising their modus operandi for more effective compliance. It is only through this ongoing process that eventually the start-up may be capacitated enough to provide training to its partners to make the overall process more compliant, resilient, competitive, and effective in dealing with risks associated with ESG.

An effective communication system and channel both for the internal stakeholders and the external stakeholders can assure effective knowledge about organisational compliances. Therefore, the following broad process of communication can be adopted –

a. Internal Communication –

   i. Any non-compliance identified by any employee must be reported to the immediate supervising authority.

   ii. The supervisor must take adequate action based on the report by accounting for the non-compliance associated.

   iii. If the non-compliance associated is beyond the scope of the supervising authority, the report must be made to the person responsible (in case the same may be identified), or otherwise to the Board of Directors/ Owner of Start-ups.
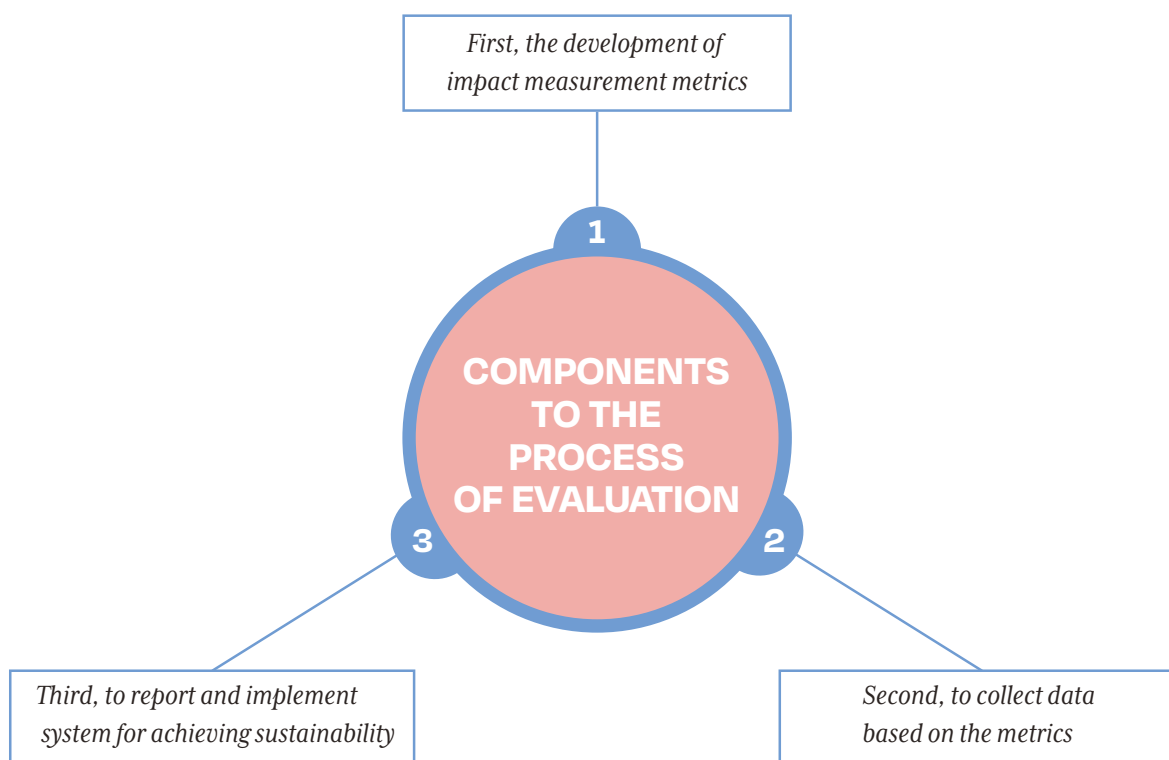
b. External Communication –

   i. Any non-compliance can be reported to the Compliance Officer or Board of Directors/ Owner of Start-ups, as the case may be.

   ii. The procedure as deemed fit will be adopted by the organisation for the purpose of mitigating the risk.

E. Evaluate, Monitor, and Improve

Developing good business practices and implementing the same is important towards responsible business and making a more compliant organisation. But the business environment is ever-changing. Although the risk assessment can help an organisation identify new risks, there is a need to measure the effectiveness of the implemented systems and the extent of impact in ameliorating the organisational standards and processes. Therefore, the organisation must develop parameters to gauge the impact.

ICT can also play a game-changing role for start-ups when used for identifying risks, both of financial and non-financial nature. The current software and ERPs can be used to better collect data from all the departments and assessing the risks that the start-up may face.

There are three components to the process of evaluation –

First, the development of impact measurement metrics

1

COMPONENTS TO THE PROCESS OF EVALUATION

3

2

Third, to report and implement system for achieving sustainability

Second, to collect data based on the metrics

The start-ups may develop metrics using simple data. To measure the effectiveness of the policies on anti-corruption and prevention of sexual harassment, the organisation can simply assess the total number of complaints received. If no complaints are received, the conclusion should not immediately reflect effectiveness of the policies. There might be other factors impeding the overall effectiveness of the system in place.

Some parameters that may be used by start-ups:

- Effectiveness of training

- Effectiveness of controls

- Effectiveness of allocation of responsibilities for meeting anti-bribery management system requirements

- Effectiveness in addressing compliance failures previously identified.

- Instances where internal audit are not performed as scheduled.

Qualitative analysis of the data collected and feedback on procedures from the employees would go a long way in developing more robust frameworks. Feedback should be collected on anonymity-basis, thereby promoting independent and unbiased opinion.

To assess the overall sustainability and transparency, the start-up should also take feedback from its partner organisations. The partners should be promoted to speak about the nuances involved in the transactions and approach of the personnel.

Data Collection [1]

Data may be collected through annual surveys. They can also be collected by keeping a register where employees can incorporate their suggestions and feedback.

Anonymity should be one of the priorities. However, where it is so expedient that the name of the complainant ought to be made available, it should be done but to a limited number of functionaries and only to those associated with the process of investigation or data analysis. With the advent of time and enhancement of the overall functions and operations of the start-ups more comprehensive mechanism may be developed for capturing detailed data.

Internal audits can be a catalyst to collect data. The audits will also keep the data independent and unbiased and based on completely objective assessment of the organisational procedure.

Reporting Mechanism

The organisation must have a whistle-blower protection policy. An independent channel for communication must be maintained for reporting all events deviating from the policy-framework, this will ensure the anonymity and protection to the whistle-blower. The reporting can also help in collecting data. Reporting can be departmentally coordinated and assimilated at the time of data analysis. The start-ups may use ICT tools for these purposes. Based on the evaluation and deviations thereof, improvement measures may be adopted by the organisation.

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[1] Compliance with GDPR laws and country specific data protection norms and best practices.

Handling things when it goes wrong

Entrepreneurship as it looks most amazing and thrilling comes with many situations where things go wrong and it's hard to decide how to manage them. Some of your business partner could have performed lower than the expectations, one of your employees could have breached the company policy, you would have committed some policy mistakes going against the law of the land and so on. Having a policy for every such situations is quite difficult. A cool and stable thinking can solve such situations. Building a business from the scratch is indeed a very difficult and challenging task. Maintaining the calmness is very much required. Not acting on such situations abruptly is a very good idea and taking some time to think while taking tough decisions is quite worthy.

One important thing to take note of is documenting such situations and how you tackled it so that the coming leadership and others of your company can learn from it and be good at it in near future.

Self-Reporting

There might be circumstances in your company where any person associated with your company or the company itself has committed some wrong or has been involved in some kind of illegal activity. People usually tend to not disclose such acts but in long run it can very badly harm the interest of the company. Self-Reporting of such illegal acts to the public authorities are good options as it depicts the lack of intent of doing so on part of the company and in turn reduces the penalty in so many cases. Self-Reporting is also good in so much as it maintains the credibility and reputation of the company and also increases the good will of the company among both the business community and among customers.

Whistle-blower Protection

— Keep it simple
— Promote anonymity
— Ensure anti-retaliation
— Punish fraudulent and reckless reporting
— Incentivise reporting
— Take action and investigate before action

The start-ups today are the mega-enterprises of the future. The decisions that they take today will shape their durability, competitiveness, operational feasibility, and growth. With the change in the way business is done, the business environment has changed significantly. This calls for proactive measures on part of start-ups to develop culturally ethical organisations. The mandatory compliances are part of the legal framework but governance frameworks that integrate other aspects such as risk management, gift policy, human rights, etc. help in strengthening the overall business credibility. Thus, in the contemporary context, start-ups must ensure that beyond the traditional notions of profit maximisation, they must have an impact on the social and governance front.

Annexure - 1

Preparatory Work the Start-ups should undertake before Registration

Have a strong mission

Knowing your purpose guides important decisions you'll make along the way, so be sure that your mission is clearly defined.

Standing out is no easy feat, and no one magic formula guarantees results. However, knowing your business's purpose is central to guiding these decisions.

Do your research[1]

We must understand the industry we will be involved in so we can dominate. No matter how unique we might think our business idea is, we should be aware of competitors.

Assess the market before opening your doors. Understand the industry you wish to enter, as well as its major players and your future competitors.

Does the Market Need your Product or Service?

This is also one of the crucial questions to ask yourself. After all, if your product or service is not liked or required in the market, it will be a dead-end for you. So, you need to make sure that your product or service is essential for the people.

Write a business plan

Having an idea is one thing, but having a legitimate business plan is another story.

Once you have your idea in place, you need to ask yourself a few important questions: What is the purpose of your business? Who are you selling to? What are your end goals? How will you finance your start-up costs? These questions can be answered in a well-written business plan.

Determine your audience

Spend time considering who your target demographic is. This audience will be the driving force in each decision you make.

Examine Your Business Requirements

- Consider the best location for the business
- Identify your basic equipment requirement and costs
- Will you need to employ more staff?
- Identify the availability of input services or material
- Calculate the Cost of your services or product

Calculate Investment Requirements

- Identify all start-up costs associated with the business
- Identify the cost as per your business plan
- Identify the Working Capital requirement for initial period till organisation reaches break even point.
- Identify the break-even point
- Identify ways of financing your business venture

Secure appropriate funding

Starting a business requires money that you likely won't have right away. This is why you need to seek out ways to acquire capital. The start-up costs will obviously vary from industry to industry, so your company may require more or less funding depending on the situation.

Make a plan for how you will fund start-up costs, whether that's your own funds, asking friends and family for money or borrowing from a financial institution or finding some PEs, VCs or angel investor.

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[1] https://www.failory.com/blog/how-to-start-a-startup-in-india

Developing Your Sales Plan

- Having assessed your business idea, estimate your selling price.

- How will you promote the enterprise?

- Who/where is your target market (local/national/international)?

- What channels of distribution will be used?

- Determine the break-even point for selling purpose.

Bring in the professionals

It's impossible for entrepreneurs to know everything about running their new venture. Tapping into the experience of seasoned professionals can make sure you're starting on the right foot.

Bringing in experienced professionals, such as those for legal and accounting advice, can pay huge dividends when it comes to making sure you are operating as best as you can.[2]

Understand your tax burden

Understand when, how and to whom you pay taxes and fees. We need to understand the applicability of taxes of our venture like income Tax, GST, TDS, Import Duty etc. It is one of the crucial matters of planning as it directly effects the profitability of our venture.

Choose a structure

A key initial step to take when starting your business is choosing its legal structure. It is important to research the types of business ownership to help you make the best decisions for your business. You can seek the advice of your professional for this. Following are the key business structures we usually see:

- Sole Proprietorship

- Partnership

- Limited Liability Partnership (LLP)

- Private Limited Company

- Public Limited Company

Be aware of the legal obligations that will affect your business

You will need to be aware of your statutory obligations such as regulatory compliances, Licensing, Approvals etc. As in case of failure of any legal obligation, it may cost huge. Even sometimes the business of the Company becomes the question.

Business registration

After choosing the appropriate business structure, it is required to be registered with the appropriate authorities to give it a legal validity. Once you are registered with authorities, then you may commence your business, subject to the compliance of other requirements, if applicable on your Company.

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[2] https://www.businessnewsdaily.com/1484-starting-a-business.html

Annexure - 2

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 - POSH Act

With the rise of the start-ups in India, more and more women are entering the corporate work making it is essential to have a culture of mutual respect and a safe working environment which call for strict regulations and procedures for prevention of sexual harassment (POSH) of any kind at the workplaces on which all the staff members should be trained. It is one of the most important issues that need to be addressed under the compliance systems.

To support the cause, in the year 2013, the "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act" was passed in India. It is a legislative act in India that seeks to protect women from sexual harassment at their place of work. The Act came into force from 9 December 2013.

Essential Requirement to Comply with the POSH Law:

- The Prevention of Sexual Harassment (POSH) at workplace Act is legal requirement for every workplace, establishment, company or organisation employing 10 or more employees (full time, part time, interns or consultants included) irrespective of its location or nature of industry.

- The Ministry of Corporate Affairs has made it mandatory for all private companies to make disclosure of compliance under "POSH Act" through their Annual Board Report.

- In case of non-compliance, government can take stern action against employers who fail to comply with this law. Non-compliance to POSH act results in heavy monetary penalty, additional damages and company license cancellation.

S. No.	Activity	Timelines	Actions to be taken
1	Create an Anti-Sexual Harassment Policy and recognize sexual harassment as a form of misconduct in the business	Immediate	The policy should be specific to the set up can be created with the help of experts in the field in accordance with the Law. It should be incorporated in the employment contracts/ HR policy.
2.	Constitute an Internal Complaints Committee (ICC)	Immediate	An 'Internal Complaints Committee' ("ICC") should be formed to hear and redress grievances pertaining to sexual harassment. The constitution of ICC is mandatory under the POSH Act.

S. No.	Activity	Timelines	Actions to be taken
3	Display details of the ICC members/ information posters/ notices in prominent places in the premises of the business informing employees about zero-tolerance towards sexual harassment	Immediate	Posters with graphics should be prepared to inform the staff on the policy. The posters too can have the information of the members of the ICC and the organisation's policy. OR The complete details and process to approach the ICC must be properly displayed for information of the employees in case of any form of sexual harassment.
4.	Organise sensitisation workshops and seminars to inform the employees about their rights	Periodic	Regular training, at frequent intervals, irrespective of the gender, must be provided to the entire existing and new staff member around the organisation's Anti Sexual Harassment Policy. These can be both online and offline trainings.
5.	Organise capacity-building programmes for the members of ICC	Periodic	Training should be given to members of ICC for conducting sexual harassment proceedings without any prejudice or assumptions Also, they should be updated from time to time for any new information or amendments to the policy and the Law.
6.	Annual Report to be sent to the District Officer containing details of the sexual harassment proceedings	Annually (for each calendar year)	To be furnished in the prescribed format. All the records of any complaints or proceedings should be maintained properly and filed accordingly annually.
7.	Implement gender-neutral policies	Optional	Formulate gender-neutral versions of the sexual harassment policy to afford adequate protection to all employees irrespective of gender.

Annexure - 3

Labour Codes [1]

Government of India has proposed and passed four labour codes* namely Code on Wages, Industrial Relations Code, Code on Social Security and Occupational Safety, Health and Working Conditions codes, replacing a total of 29 existing labour laws to simplify and modernise labour regulation in India. List of the existing labour laws that will be replaced by the above mentioned four codes –

S. No.	Code	Existing Act
1	Code on Wages, 2019	1. Payment of Wages Act, 1936 2. Minimum Wages Act, 1948 3. Payment Bonus Act, 1965 4. Equal Remuneration Act, 1976
2.	Industrial Relations Code, 2020	1. Trade Unions Act, 1926 2. Industrial Employment Act, 1946 3. Industrial Disputes Act, 1947
3	Code on Social Security, 2020	1. Employees' Compensation Act, 1923 2. Employees' State Insurance Act, 1948 3. Employees' Provident Funds and Miscellaneous Provisions Act, 1952 4. Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 5. Maternity Benefit Act, 1961 6. Payment of Gratuity Act, 1972 7. Cine Workers Welfare Fund Act, 1981 8. Building and Other Construction Workers Welfare Cess Act, 1996 9. Unorganised Workers' Social Security Act, 2008
4	Occupational Safety, Health and Working Conditions Code, 2020	1. Factories Act, 1948 2. Plantations Labour Act, 1951 3. Mines Act, 1952, 4. Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955 5. Working Journalist (Fixation of Rates of Wages) Act, 1958 6. Motor Transport Workers Act, 1961 7. Beedi and Cigar Workers (Conditions of Employment) Act, 8. Contract Labour (Regulation and Abolition) Act, 1970 9. Sales Promotion Employees (Condition of Service) Act, 1976 10. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 11. Cine Workers and Cinema Theatre Workers Act, 1981 12. Dock Workers (Safety, Health and Welfare) Act, 1986 13. Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996

[1] These four codes are still not came into force but expected to come in force in coming few months.

* Rules under the new codes are yet to be framed by various states. Although the major changes have been pointed out above and suggestions have been provided with, it is advisable to take detailed advice of an expert on labour law regulations for minute details and complying with them.

The major changes brought about in these four codes are summarised below –

Code on Wages –

- Persons carrying out managerial work will also be considered as employee and the sales promotion people will come under the definition of worker.

- The concept of floor wage has been introduced which will be determined by Central Government, the minimum wage cannot be lower than the floor wage.

- Minimum limitation period to file a claim by an employee has been increased to three years. Also, the new code places the burden of proof on the employer that the amounts claimed by employee has been paid.

Industrial Relations Code –

- Threshold for application of the provisions related to industrial dispute has been increased to establishment having 300 and more workforce.

- Fixed term worker to be treated at par with permanent worker including benefits like gratuity etc.

- For every establishment employing 20 or more people, the proportion of women in grievance redressal council will in proportion to their representation in the workforce.

- Sixty days' notice has to be given before closing down any undertaking. (Not applied to establishment having less than 50 workers).

Code on Social Security –

- Gig and platform worker has been introduced and are now covered under this Code.

- Dependants' Benefit will now be reviewed after the attainment of age of 25 years by a claimant.

- Dispute proceeding related to provident fund and insurance can only be initiated within five years from the date when the dispute arose.

- Maternity leave of up to 26 weeks will be included for the purpose of calculating continuous period in regard of gratuity.

- Several maternity benefits have been increased like medical bonus, period of leave, crèche facility etc.

- Now, compensation payable to an employee if accident/injury occur while commuting to and fro between employee's residence & place of employment for duty or after performing duty.

- In case of a construction sector establishment the cess has to be paid within 60 days on the basis of self-assessment.

- Maintaining of records has been made widen, establishments also need to report vacancies to newly formed career centres.

- Punishments under the code has been enhanced and the compounding of offences has been made strict.

Occupational Safety, Health and Working Conditions Code –

- Several benefits for interstate migrant worker like yearly journey allowances to and fro their native place and other benefits in the same way as given to other workers has to be provided by the employer.

- Women workers have been allowed to be employed for all types of works including hazardous works after providing adequate safeguard prior to their employment and also before 6 AM and beyond 7 PM.

- Establishments having 10 or more employees need to make an application for registration under the code within 60 days after the commencement of the code.

- Any change in ownership and management or in case of closing of the establishment after registration shall be intimated by the employer to the registering officer within thirty days of such change.

- Employer need to inform the authorities about any accident following which the person

injured is prevented from working for a period of 48 hours or more or in case of death.

- Employers need to appoint safety officers in a factory where any hazardous process/work is going on.

- Employer are required to provide annual health examination or test free of cost to employees.

Suggestions for Start-ups –

There have been wide changes in the new labour codes and there are heavy penalties for not complying with them. In the existing labour law regime Ministry of Labour & Employment has given numerous exemptions and compliance benefits for start-ups like in the first year of their incorporation start-ups can self-certify and regulate inspections and only have to submit certain declarations to enforcement agencies, the labour inspector will not make any inspection for initial 3 years until a complaint is made in writing and will only inspect after obtaining prior permission from high level authorities.

After the new labour codes will come into effect the start-ups are advised to do the following –

- Carefully go through the new rules and policies framed under the new codes to avail the benefits of exemptions given to start-ups for initial years of their establishments.

- Definitions of various terms has been updated and also various new concepts has been introduced like the concept of floor wage, giz and platform worker, provisions related to maternity benefits, treating fixed term worker at par with permanent employee etc. Start-ups shall make/revise their HR policies in conformity with the new provisions introduced in the codes.

- Make various other internal policies of the start-up in conformity with the new codes like maintaining of records, reporting vacancies to career centres, proportion of women in grievance redressal council etc. to avoid any penalties by the enforcement authorities.

- Form internal committees and council as prescribed in the new codes and publicize the roles of people of those committees and their importance among employees for better compliance.

- Make annual compliance labour law audit mandatory for the establishment to identify any gaps and avoid any kind of non-compliance.

Annexure - 4

Contract Management

Contract Management can be described as a process that enables two parties that are about to enter into a contractual agreement, to receive the most efficient and favourable outcome that they can. It is the process of managing contracts, from their creation to their execution by the chosen party and finally to the eventual termination of the contract.[1] A good contract management practice enhances the outcome, reduces business risks associated with the contract and provides a better contracting experience between the two involved parties.

Various steps involved in Contract management:

Contract management, as a process, is quite detailed and organized to ensure the best possible result for the parties to the contract.

The process can be summed up in the following steps –

1. Preparation – This step involves drafting contract keeping in mind the expectations of the parties involved, the intended outcomes and assessing and putting clauses in the contracts to mitigate potential risks etc.

2. Negotiation – After the first draft of the contract is ready, the negotiation starts between the parties to make any changes in terms of the contract. After incorporating the mutually agreed changes, parties finally sign the contract making it binding on both of them.

3. Addendums and amends - The two parties with mutual agreement and understanding can add or delete to the existing clauses of the contract at any later stage.

4. Auditing and Enforcement – This step involves having a proper check and balance on the parties whether they are performing the decided obligations. Regular auditing ensures better performance of the contract as it identifies gaps in enforcement and thereby reducing business risks.

Need of Contract Management for Start-ups

Start-ups have limited financial resources and small size business operations. Most of the time their business operations revolve around their close near and dear ones. Since most of the people involved in their business operations are their trusted friends, family members and close circles, they tend to neglect and avoid proper documentation and other formal parts of their business processes. Due to this small size of business operations, limited available resources and due to their dealings are mostly with the founder's and key person's close circles, they avoid entering into formal contracts or have very less no. of contracts in place and thus in turn avoid having a good contract management practice from their early start of business operations.

As the size of start-ups grows, they face challenges due to lack of proper documentation and formal contracts and got stuck in situations like irregularity in payments, irregular and poor quality of services delivered by their vendors, denied obligations by any party the start-up has been working with, etc.

Due to the lack of existence of any contract and a good contract management practice start-ups find themselves helpless in such situations and cannot find a legal way to come out of such situations.

Apart from this, if a start-up is entering into contracts with the parties they are dealing with, the lack of good contract management practice exposes them to multiple risks like -

- Absence of important and essential clauses in the contract favourable to the start-up.

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[1] https://www.medius.com/

• Presence of one-sided clauses detriment to the interest of the start-up.

• Lack of foresightedness in assessing future risk.

• Financial loss to the start-up in near future.

To avoid the risks mentioned above and in the good interest of the start-up, the need of contract management becomes essential for their continuous growth without any hindrances and unwanted litigation in the near future.

Essentials of having a good Contract Management Practice

A start-up should have at least these three essential things to have a good contract management practice in place [2] -

• A system or central repository that contains all the contract documents and data for each relevant business party.

• A system that helps start-ups to remind their appropriate parties about critical actions and dates concerning the contract.

• A way to track, record, and continuously remind the appropriate parties about their obligations, compliance, and commitments concerning the contract.

Benefits for start-ups of implementing Contract Management Practice

Irrespective of size of the business a good contract management practice is a very important factor for business growth. A research done by the International Association for Contract & Commercial Management (IACCM) shows that good contract management can improve the profitability of any business by 9% of its annual revenue. [3]

Various benefits of implementing a good Contract Management Practice are summarised below - [4]

• **Acquisition/Investment:** By having a clear centralised record of all contracts, their value and their associated obligations, it becomes much easier for potential investors to do their due diligence and to appraise the company accurately.

• **Risk mitigation:** Crucial for businesses of any size but particularly for smaller firms where there is generally less financial insulation from situations like supplier failure or macro-events.

• **Benefits realisation:** Typically as much as 50% of negotiated benefits are never realised in contracts. In start-ups, where priorities can shift rapidly, and people are spread thinly, the risk of this happening is increased. Having a process in place that prompts timely action and follow-up is crucial to getting the full benefit of what's agreed.

• **Reduced administrative overhead:** It's considerably easier to implement processes from the start and to centralise the data when the business is smaller and the number of contracts is lower.

Some suggestions for the start-ups –

At the preparation, negotiation and the addendum stage the start-ups need to look after these following important points -

• The local stamp duty must be paid for the contract to be effective and binding as per the law of the land.

• The responsibilities of both the parties should be clearly defined in the contract, specific dates like effective date of start of the contract, termination, intermediary timelines for completion of their respective obligations etc. should be present in the contract.

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[2] https://www.intelligentcontract.com/resources/intelligentcontract/

[3] https://www.worldcc.com/Resources/Content-Hub/View/ArticleId/1207/Poor-Contract-Management-Costs-Companies-9-Bottom-Line

[4] https://www.gatekeeperhq.com/blog/the-case-for-contract-management-in-startup-businesses

- The clauses related to some likely scenarios that might come in near future, force measure clause, which relieves the start-up of its obligation in case of natural calamity/situation beyond control of common masses, should be present.

- The clauses related to labour law regulations, arbitration, anti-corruption, conflict of interest, scope of work, confidentiality, Intellectual property etc. should be present and properly defined in the contract.

- The clause related to indemnification, financial consideration and schedule of payments should be as per the requirements of the start-up and well thought of.

- Start-ups should avoid any kind of ambiguous clause to be there in the contract.

- There must not be any clause in the contract which goes against the law of the land.

Annexure - 5

Note on the compliance requirements of indian company [1] and practices that company should adopt [2]

Many believe that only public companies or large, established companies with many shareholders need to be concerned about, or can benefit from, implementing corporate governance practices. The reality is that all companies – big and small, private and public, early stage or established – compete in an environment where good governance is a business imperative. One size doesn't fit all, but right-sized governance practices will positively impact the performance and long-term viability of every company.

In this note an attempt has been made to list out the compliances that are mandatory for every Company and their significance in Corporate Governance and also the compliance that should be done by every Company in order to positively impact the performance and long-term viability of the Company

Following are the compliances that are mandatory for every Company and their significance in Corporate Governance:

S. No.	Particular of Compliance	Description	Purpose
1	Board Meetings	Minimum 4 Board Meetings to be held every year with not more than 120 days gap between two meetings. In case of small company, it is sufficient to conduct only two Board Meetings.	To ensure participation of Board, Transparent Decision Making and Informed Decision.
2.	Filing of Financial Statements	Every Company is required to file its Financial Statements within 30 days of its Annual General Meeting with Registrar of Company in E-Form AOC-4 Form AOC-4 [zip].	To make the regulators and stakeholders aware of the financial position of the Company and to ensure important disclosure by the Company.
3	Filing of Annual Return	Every company is required to file its Annual Return with Registrar of Companies within 60 days of Annual General Meeting in E-Form MGT-7. Form MGT-7 [zip] A company having turnover of INR 50 Crore or more shall be certified by a Practicing CS in Form MGT-8. (Refer Chapter VII The Companies (Management and Administration) Rules, 2014)	To ensure important disclosure by the Company about its constitution, management and changes in shareholding, management etc.

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[1] Most of the start-ups has been registered as private limited company in India.

[2] As per Companies Act 2013
https://www.sebi.gov.in/sebi_data/commondocs/corpgov_p.pdf
https://taxguru.in/rbi/exemptions-listed-entities-sebi-lodr-regulations-2015.html
https://www.mcinnescooper.com/publications/the-top-5-corporate-governance-best-practices-that-benefit-every-company/
https://neerajbhagat.com/blog/index.php/mandatory-compliances-for-a-private-limited-company-in-india/

S. No.	Particular of Compliance	Description	Purpose
4	Directors' Report	Directors' Report is to be filed covering all the information required for Small Company under Section 134 within 30 days of AGM along with Form AOC-4. Form AOC-4 [zip] (672 KB). It should be signed by the "Chairperson" authorized by the Board, where he is not so authorized by at least 2 Directors.	To ensure important disclosure by the Company and to address the stakeholders about the overall working of the Company during the financial year.
5	Filing of Disclosure of interest by Directors	Every director at: · First meeting in which he participates as director; or · First meeting of Board in every FY; or · Whenever there is change in disclosures shall disclose in Form MBP-1 (along with list of relatives and concern of relatives in the Company as per RPT definition), his concern or interest in any company, body corporate, firm or other association of individuals (including shareholding interest). Form MBP-1 shall be kept in the records of the company. (Refer Chapter XII The Companies (Meetings of Board and its Powers) Rules, 2014)	To address the conflict of interest. To facilitate informed decision making. To Identify Related Parties to the Company.
6.	Resident Director	Every Company is required to appoint at least one Director who has stayed in India for a total period of not less than 182 days in the previous calendar year.	To identify and set the accountability of the management as per Indian law.
7	Registers	Every Company shall keep and maintain following Registers in the specified format: · Register of Members MGT-1 (Refer Chapter VII The Companies (Management and Administration) Rules, 2014) · Register of other Security Holders residing outside India MGT-3 (Refer Chapter VII The Companies (Management and Administration) Rules, 2014) · Register of Transfer and Transmission of Shares SH-6 (Refer Chapter IV The Companies (Share Capital and Debentures) Rules, 2014) · Register of Charge CHS-7 (Refer Chapter VI The Companies (Registration of Charges) Rules, 2014 Chapter VI The Companies (Registration of Charges) Rules, 2014) · Index of the Registers · Register of Directors and KMP	To check the falsification of records and to enable the regulators and stakeholders to inspect the same as and when required.

S. No.	Particular of Compliance	Description	Purpose
8	Minutes of Meeting	Minutes of every general meeting, Creditors, Board and Committee shall be prepared and kept within 30 days of conclusion of every meeting concerned.	To set the accountability of any act of Directors as per the records of the meeting. To proof the transparency in the meeting. To proof the informed decision making. To avoid future disputes.
9	Statutory Auditor	The BOD shall appoint the auditor in first AGM of company who shall hold the office till the conclusion of 6th AGM and shall inform the same to ROC by filing ADT-1. Form ADT-1 [zip] (192KB) The responsibility to file Form ADT 1 is that of the company and not of the auditor within 15 days from the date of appointment.	To get the accounts audited, in order to improve its authenticity and make the general stakeholder aware of the audit findings.
10	Annual General Meeting	Every Company is required to hold an Annual General Meeting on or before 30th September every year. A 21 clear days' notice is required to be given for the same.	To facilitate shareholders participation in the Company. To make the shareholder informed about financials and other matters.
11	Significant Beneficial Ownership	Every individual who is SBO to file to company within 90 days from 8.2.2019 to make a declaration for SBO. For any change in SBO, within 30 days of acquiring or change therein.	To address the issue of misappropriation of funds through corporate layers. To identify the ultimate beneficiary. To improve transparency.
12	MSME Rules	MSME Form 1 Form MSME [zip] (162 KB) to be filed half-yearly by Specified Companies by 31st October / 30th April every year.	This is to ensure timely payment of dues to MSMEs.
13	Deposit Rules	DPT-3 Form DPT-3 [zip] (179 KB) is to be filed annually by every company other than Government Company for: · Deposit or · Particulars of Transaction not considered as Deposit or · Both To be filed annually by 30th June and furnish information as on 31st March of that year duly audited by auditor of the company.	To enable the stakeholder and regulators aware of the sources of funds. To check the parking of funds in a Company. To protect the interest of stakeholders. To make them informed.

S. No.	Particular of Compliance	Description	Purpose
14	Company Name Board	Every Company shall paint or affix the name and address of registered office and keep the same painted/affixed, outside every office or place in which its business is carried on, in legible letters.	To make the stakeholders aware of the Company address and to ensure proper delivery of all the communications addressed to Company.
15	Letter Head of Company	Every Company shall get its name, address of registered office, CIN, telephone and email printed on all business letters, billheads, letter papers. Notices and other official publications.	To enable all the stakeholder informed about the basic details of the Company and contact details.
16	DIR-3 KYC	KYC of the Company Director(s). Form DIR-3 KYC [zip] (241 KB)	To inform the regulators any changes in the contact details of Directors. This helps in verification of current Directors of the company.
17	Disclosure of Non-Disqualification	Directors' disclosure of not being disqualified DIR-8 Each company directors in each financial year must file a non-disqualification report with the company.	To make the Board informed about the disqualification of Director.
18	PAS-6	This return is filed for DEMAT shares. Form PAS-6 [zip] (163 KB)	To make the regulators and stakeholders informed about any changes in membership of the Company and the status of stakeholders request and their disposal.
19	FEMA/RBI Compliances FLA Return	Annual Return on Foreign Liabilities and Assets FLA Return. As per the Regulations of Foreign Exchange Management Act (FEMA), 1999 Shall have to be filed by all Indian Companies who received FDI (Foreign Direct Investment) and/or made FDI Abroad https://flair.rbi.org.in /fla/faces/pages/login.xhtml	To ensure reporting of Foreign Assets and Liabilities held by the Company. To make the RBI update of any gaps.
20	Income Tax Compliances	ITR, TDS Returns etc. are filed every year/ quarter as required (https://www.incometaxindia.gov.in/Pages/downloads/income-tax-return.aspx)	This is a tax compliance; every Company has to fulfill.
21	GST Compliances	GSTR-38, GSTR-1, Annual Returns are filed every year/monthly, as required. (https://services.gst.gov.in/services/gstlaw/gstlawlist)	This is a tax compliance; every Company has to fulfill.

S. No.	Particular of Compliance	Description	Purpose
22	Labour Law Compliances	Company has to comply with various labour laws, as per their applicability https://registration.shramsuvidha.gov.in/users/user_manual	To protect the interest of the labours. To identify the gaps if any.
23	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act ("POSH")	Employers are now mandated to file an Annual Compliance Report (ACR) every year as per the law.	To inform the regulators about the number of complaints raised and redressed, so that regulators can keep the track.
24	Audit Committee	Every listed company and the following classes of companies shall constitute Audit Committee: - (i) all public companies with a paid-up capital of Rs.10 Crores or more; (ii) all public companies having turnover of Rs.100 Crores or more; (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores or more.	(i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company; (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process; (iii) examination of the financial statement and the auditors' report thereon; (iv) approval or any subsequent modification of transactions of the company with related parties; (v) scrutiny of inter-corporate loans and investments; (vi) valuation of undertakings or assets of the company, wherever it is necessary; (vii) evaluation of internal financial controls and risk management systems; (viii) monitoring the end use of funds raised through public offers and related matters.
25	Stakeholders Relationship Committee	A company which consists of more than 1000 shareholders, debenture holders, deposit holders and any other security holders at any time during a financial year.	The main object is to consider and resolve the grievances of security holders of the Company.

S. No.	Particular of Compliance	Description	Purpose
26	Vigil Mechanism/ Whistle Blower	Every listed company and the company belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns and grievances- (a) The Companies which accept deposits from the public (b) The Companies which have borrowed money from banks and public financial institutions in excess of 50 crore rupees.	The mechanism provides for adequate safeguards against victimization of persons.

The above list is not exhaustive. There are various other compliances and disclosures also, which aims to facilitate better Corporate Governance and Increased Firm Value.

Practices that Company should adopt

As Corporate Governance is beyond the realm of Law. It stems from the culture and mindset of management and cannot be regulated by legislation alone.

It is a key element in improving the economic efficiency of the firm. Credibility offered by Corporate Governance also helps in improving the confidence of the investors – both domestic and foreign.

It involves a set of relationships between a company's management, its Board, shareholders and Stakeholders.

Following are the factors, that every Company should consider to the extent possible, irrespective of the fact that these are recommendatory in nature.

S. No.	Particular	Description	Remarks
1	Build a strong, qualified board of directors and evaluate performance	Boards should be comprised of directors who are knowledgeable and have expertise relevant to the business and are qualified and competent, and have strong ethics and integrity, diverse backgrounds and skill sets, and sufficient time to commit to their duties.	How do you build and keep – such a Board? · Identify gaps in the current director composition · The majority of directors should be independent: · Develop an engaged Board where directors ask questions and challenge management and don't just "rubber-stamp" management's recommendations. · Educate them. · Evaluations of their performance.
2	Define roles and responsibilities.	Establish clear lines of accountability among the Board, Chair, CEO, Executive Officers and management	1. Create written mandates for the Board and each committee setting out their duties and accountabilities. 2. Separate the roles of the Board Chair and the CEO.
3	Emphasize integrity and ethical dealing	Not only must directors declare conflicts of interest and refrain from voting on matters in which they have an interest, but a general culture of integrity in business dealing and of respect and compliance with laws and policies without fear of recrimination must be emphasized.	To create and cultivate this culture: · Adopt a Conflict-of-Interest policy, a code of business conduct setting out the company's requirements and process to report and deal with non-compliance, and a Whistleblower policy. · Make someone responsible for oversight and management of these policies and procedures.
4	Engage in effective risk management.	Companies should regularly identify and assess the risks they face, including financial, operational, reputational, environmental, industry-related, and legal risks	The Board is responsible for strategic leadership in establishing the company's risk tolerance and developing a framework and clear accountabilities for managing risk. It should regularly review the adequacy of the systems and controls management puts in place to identify, assess, mitigate and monitor risk and the sufficiency of its reporting.

MSME INNO

The Ministry of Micro, Small & Medium Enterprises; Government of India, and GIZ implemented a bilateral project "Programme for Modernisation and Innovation Promotion in MSMEs in India (MSME INNO)". This project seeks to strengthen the innovation system by systematically fostering cooperation between companies, research institutions, government, service providers and larger enterprises for introduction and dissemination of new technologies, products, processes and/or business model innovation.

Alliance for Integrity

The Alliance for Integrity is a business-driven, multi-stakeholder initiative seeking to promote transparency and integrity in the economic system. To achieve this goal, it fosters collective action of all relevant actors from the private sector, the public sector and civil society. The Alliance for Integrity is a platform that offers practical solutions to strengthen the compliance capacities of companies and their supply chains. In addition, the Alliance for Integrity contributes to the improvement of framework conditions by fostering dialogue between the public and private sectors. This is why the Alliance for Integrity is the significant global contact point for businesses countering corruption collectively.

Partners for Transparency Foundation India

Partners for Transparency Foundation India (PTF India) is an independent affiliate of the Partnership for Transparency Fund. PTF India has two primary goals: (i) to promote and advocate good governance, accountability, and transparency by encouraging participation of citizens and civil society; and (ii) to support grass root level initiatives undertaken by members of the civil society across the country and strengthen the effectiveness of good governance in the delivery of public goods to less developed communities.