



Knowledge of Law and Risk Management

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“An earthworm expects to find a law, a printed law, for every circumstances. Even have laws for private matter such as contracts. Really, if a man’s word isn’t any good, who would contract with him ? Doesn’t he have a reputation ? The law of contract exercises a particularly powerful grip on the imaginations of lawyers. What Voltaire said about God could equally be said of contract law: if it did not exist, then it would certainly be necessary for us to invent it”

- Anton P. Trichardt
Author of Letter of Comfort

Legal System In India

A] Federal Court System :

- Under the Constitution of India the court system are

Supreme Court of India, Highest Court



High Courts of various States



Various Specialized Tribunals(Commercial Courts) constituted under various specific Acts



District Courts

- Jurisdiction of Courts.
 - Depending upon – i) governing laws of contract
ii) property matters
iii) Cause of action arising in respect of dispute

Legal System In India

B] **Legal Process-** Process where the courts attempt to resolve the conflicts & provide remedy.

1. Code of Civil Procedure 1908

(Objective : This Act prescribes the procedure to take cognizance of legal issues of civil nature by different courts as per the jurisdiction stated in the Code)

2. Criminal Procedure Code 1973

(Objective : This Act prescribes the procedure to take cognizance of various offences by different courts as per the jurisdictions of various trial courts stated in the Code)

3. Various other Administrative and Procedure laws managing the court system.

Law making process

Under the Constitution of India law making process divided under three category :

- A) By Central Government
- B) By State Government
- C) By Central & State Government

I] Central Laws

- Companies / Partnership Laws, Forex Laws, Factories / Labour Laws, pollution control laws, Contractual laws
- direct and indirect taxes, The Negotiable Instruments Act, Banking Laws, The Competition Act are applicable to all states of India with certain exceptions.

II] State Laws: State laws are applicable to particular states only, e.g.

- Property laws, stamp duty laws and various other laws.

III] Local body Laws of each state

- Municipal, gram panchayat, local body laws.

Laws Applicable

A] Laws Applicable at Entity level

- Industrial Disputes Act, 1947;
- Employee's Provident Funds & Misc. Provisions Act, 1952;
- Workmen's compensation Act 1923;
- Companies Act, 2013;
- Payment of Wages Act, 1936;
- The Minimum Wages Act, 1948.
- The Negotiable Instrument Act, 1881
- The Competition Act, 2002
- Insolvency and Bankruptcy code 2016

B] Laws Applicable at Unit level;

- Trade Union Act, 1926
- Contract Labour (Regulation & Abolition) Act, 1970
- Factories Act, 1948
- Industries (Regulation and Development) Act, 1951
- Industrial Employment (Standing Orders) Act, 1946.

Legal Form of Business

- Individual
- Sole Proprietary
- Partnership- Membership – Minimum- 2; Maximum- 50
- LLP(Limited Liability partnership)- Membership- Minimum- 2; Maximum- No limit
- OPC(One Person Company)
- Company- Private- Minimum- 2; Maximum- 5
 - Public – Minimum- 7; Maximum- no restriction

Risk Management

A] Identification

- Legal risk can be identified at both Organisation level and Unit/ outfit level
- Categories of risk and measures to deal with them
 - Employment practices and safety at workplace– Documented employee policies and procedures, health insurance of employees/ third party insurance
 - Fraud - implementation of internal audit and systems to monitor the transaction activities based on developing system in the Organisation to prevent frauds
 - Title and ownership of physical assets - land/ plant/ machinery/ retail outfit and of intellectual property – conducting title due diligence upfront, payment of appropriate stamp duty, local taxes, registration of ownership/ assignment of intellectual property (patent, trademark, copy right)
 - Default in compliances with various laws/ rules/ regulations/ company policy - appointment of in house compliance officer/ officer-in-default and outsource to a person with knowledge of law for various compliances
 - Health and Safety issues in textile industry – Introduction of health and safety policies and procedures based on guidelines, issues by World Banks and other international organizations
 - Environmental risk – Introduction of environmental management policies to be prepared based on World Bank guidelines and any other international organization issue in this regard from time to time as applicable in India.

Risk Management

B] Impact

- Legal Risk, is an integral part of business decision - it can not be eliminated completely, it can only be minimized
- impacts- monetarily as well as non-monetarily (on goodwill, brand, reputation) including civil and criminal liability

C] Due Diligence

- a) by way of due diligence to identify various risk under various laws
- b) by developing system and procedure for its compliance
- c) By way of transferring the risk to the third party
- d) By taking insurance wherever it is possible.

D] Best Practices

- Compliances of Corporate Governance Guidelines
- Compliances of Laws relating to Corporate Social Responsibility

“ Study of law is essential in everyone's general education, not just for those intending to enter the Legal Profession ”

Thank You

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