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Research

Start-up Governance Essentials

From Start to Maturity

May 2024

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or visit us at **www.nishithdesai.com**.

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Foreword by Mr. Nishith Desai

In the fast-paced realm of India's burgeoning economy, the trajectory of growth has been nothing short of extraordinary. At the heart of this transformative journey lies the indomitable spirit of innovation and entrepreneurship, led by the vibrant Indian Start-up ecosystem. This ecosystem has not only shaped the present economic landscape but is also slated to play an important role in advancing financial inclusion and propelling digital adoption across the economy. As India Inc. is pushing the needle towards achieving the trillion-dollar digital economy goal and has evolved as a hotspot for varied Start-ups, it is imperative for companies to understand the importance of corporate governance.

We at Nishith Desai Associates along with TiE Mumbai organised a Think Tank-styled conference at the research centre Imaginarium AliGunjan, Alibaug on April 29, 2023, under the Indian presidency of the G20 2023. The exclusive think tank conference, supported by Start-up20 Engagement Group led by Dr. Chintan Vaishnav was conducted under the guidance of Mr. Amitabh Kant, G20 Sherpa, Government of India. The conference led to the formation of an independent Start-up Corporate Governance Committee to draft a recommended corporate governance framework for Start-ups under the leadership of Start-up 20 Engagement Group. The Committee comprised a team of 7 members *(Ramanan Ramanathan, Harish Mehta, Apoorva Ranjan Sharma, Pratekk Agarwaal, Karthik Reddy, Kritika Murugesan, Manish Taneja and the Legal Advisory Team consisting of Nishith Desai, Sahil Kanuga and Maulin Salvi).*

Think Tank Recommendations on Corporate Governance for Indian Start-ups[1] was officially released at the Start-up20 Shikhar Summit meeting of the Start-up20 Engagement Group at Gurgaon on July 3, 2023 and was endorsed by Shri Piyush Goyal, Cabinet Minister in the Government of India on July 4, 2023. The same is also available on the website of Start-up20: www.startup20india2023.org.

We present *"Start-Up Governance Essentials: From Start To Maturity"*. This manual represents our earnest endeavour to shed light on the importance of governance in the Start-up ecosystem. At Nishith Desai Associates, we recognize that governance forms the bedrock upon which successful Start-ups build their foundations. It is not merely a set of rules and regulations but a strategic framework that guides decision-making, fosters transparency, and ensures the sustainability of entrepreneurial ventures.

In the pages that follow, we navigate through the intricacies of Start-up governance, dissecting the nuances that govern their journey—from inception, where dreams take flight, to maturity, where enduring success is measured. Governance is not an afterthought but a compass that steers Start-ups through the web of challenges, helping them navigate regulatory landscapes, attract investments, and build resilient structures.

As India's premier legal and regulatory advisory firm, we have witnessed first-hand the evolution of the Start-up ecosystem. We understand the critical role that governance plays in securing the trust of investors, partners, and stakeholders. In an era where disruptive ideas fuel progress, the need for robust governance cannot be overstated. We believe that by embracing sound governance principles, Start-ups not only fortify their internal structures but also contribute to the overall health and dynamism of the larger business environment.

1 https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Recommended-Governance-Framework-for-Start-ups.pdf.

We extend our gratitude to the dynamic and resilient Start-up community; whose spirit of innovation continues to inspire us. It is our hope that *"Start-Up Governance Essentials: From Start To Maturity"* serves as a valuable companion on your entrepreneurial journey, providing the guidance and insights needed to navigate the challenges and seize the opportunities that lie ahead.

May this manual be a catalyst for positive change, fostering a culture of governance that propels Start-ups toward enduring success and positions them as pillars of India's economic future.

Nishith Desai
Founder, Nishith Desai Associates

Acknowledgment

We extend our heartfelt appreciation to the esteemed contributors and collaborators who have played an instrumental role in shaping the content of the manual, *"Start-Up Governance Essentials: From Start To Maturity"*. Your valuable insights, expertise, and unwavering commitment have been indispensable in creating a comprehensive resource for the Start-up community.

We would like to express our sincere gratitude to each member who dedicated their time and shared their wealth of knowledge to enrich the manual. Your inputs have added depth and practical relevance, making this manual a more robust guide for Start-ups navigating the intricate terrain of governance.

In the spirit of collaboration, we acknowledge the collective effort that went into crafting this resource. It is through the synergy of diverse viewpoints and experiences that we have been able to address the multifaceted aspects of Start-up governance.

As we present this manual to the Start-up community, we do so with a deep sense of gratitude for the collaborative spirit that has made it possible. Your commitment to advancing the understanding and practice of governance in Start-ups is a testament to the strength and unity of our community.

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We would like to thank **Ahaan Raizada** and **Aparna Gaur** for their contribution to the paper.

Executive Summary

The *"Start-up Governance Essentials: From Start to Maturity Manual"* is a comprehensive guide that illuminates the principles, frameworks, and best practices of governance for Start-ups. In today's fast-paced business landscape, where technological advancements are constant, the manual emphasizes the critical role of sound governance practices in ensuring the sustainability and success of Start-ups. It offers practical insights to help readers develop, implement, and refine governance strategies that align with organizational objectives while promoting accountability, transparency, and risk management.

This Governance Manual has a clear objective: to provide founders, executives, and stakeholders with the knowledge and tools necessary to establish robust governance practices from the inception of a Start-up. Recognizing the unique challenges faced by Start-ups in India, it presents best practices to facilitate their successful growth and sustainability through effective governance.

Governance is portrayed not merely as a regulatory requirement but as the bedrock that nurtures a Start-up's development. The manual underscores the importance of fostering a culture of governance from the early stages, encouraging self-regulation among founders, and promoting responsible business leadership. It also delves into topics of environmental responsibility and tax risk management, ensuring that Start-ups make positive contributions to society while maintaining financial prudence.

This Governance Manual stands as an invaluable resource, providing Start-ups with the knowledge and tools needed to establish robust governance practices, secure funding, protect intellectual property, and thrive in the dynamic world of entrepreneurship. By implementing the insights and recommendations within, Start-ups can position themselves for long-term success and sustainable growth. It is a guide for navigating the complex journey of governance, from inception to maturity, and a blueprint for building strong, responsible, and prosperous Start-ups.

Introduction to Start-ups

India is currently a $3.75 trillion economy. To become *'one trillion-dollar'* it took India 60 years post-indepeence. The next trillion dollars were added in just 7 years and the third trillion were added in just 5 years. With such a tremendous growth in the economy, it is expected that for the next 14–15 years India will consistently add a trillion in its economy in an average span of two years. The Centre for Economics and Business Research (CEBR) have forecasted that India will become a ten trillion-dollar economy by 2035.[1]

The Start-up sector has been instrumental in shaping India's current state and is poised to play a significant part in enhancing financial accessibility and promoting digital integration within the economy.

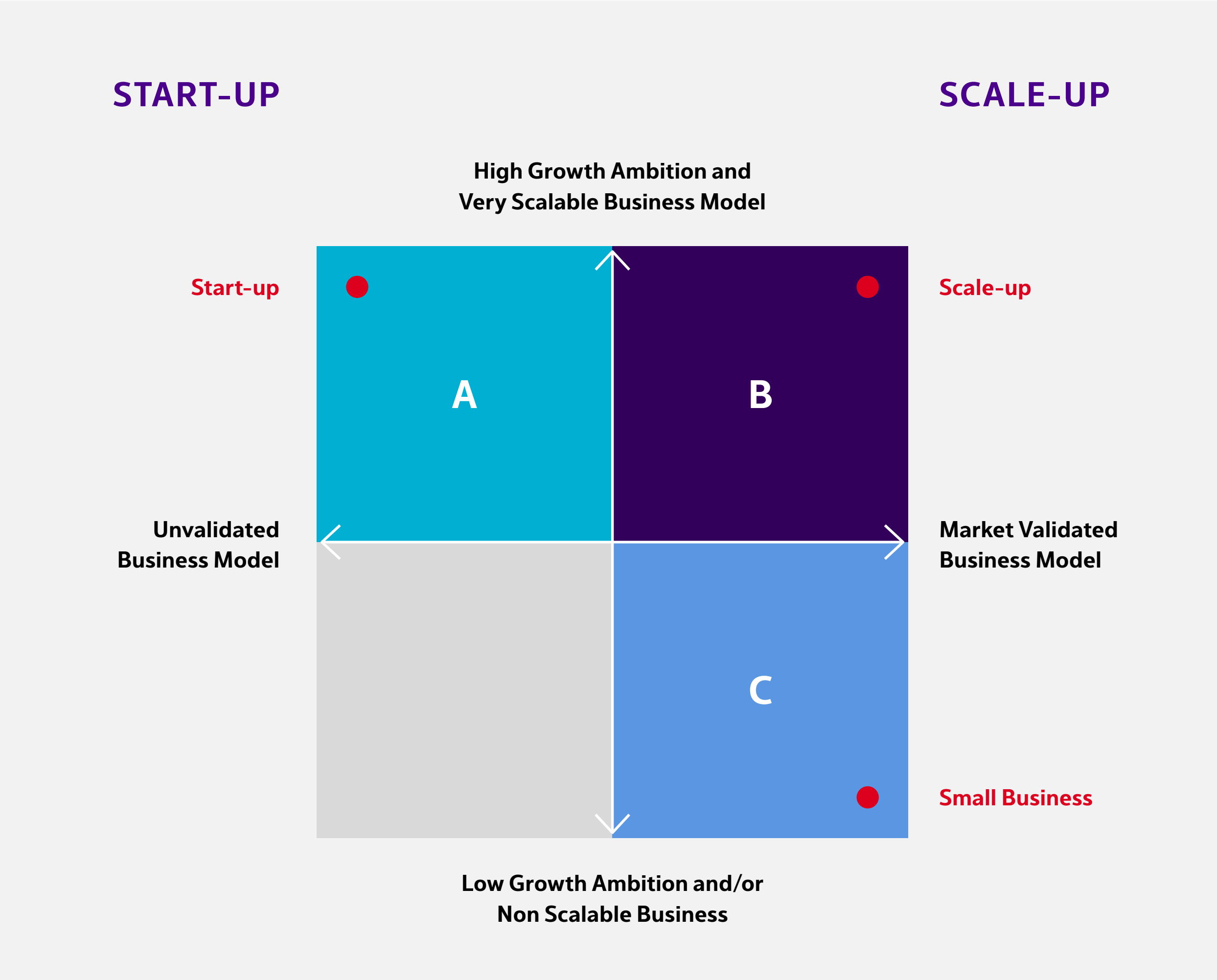
In the ever-evolving landscape of business and entrepreneurship, the term "Start-up" has become increasingly popular. It's a buzzword that has captured the imagination of innovators, investors, and aspiring business owners alike. But what exactly is a Start-up? Is it just a young company with a fresh idea, or does it encompass something more profound? Let's explore the essence of Start-ups, what sets them apart from traditional businesses, and why they have become a vital force in today's global economy.

A Start-up is, at its core, a fledgling company in its early stages of development. What distinguishes it from more established businesses is the pursuit of innovation, scalability, and a substantial growth potential. Start-ups often operate in uncharted territory, aiming to disrupt existing markets, create new ones, or bring about transformative change through their products or services. It is a venture that is initiated by its founders around an idea or a problem with a potential for significant business opportunity and impact. It is search of an idea or a meaningful problem worth-solving and building a committed founding team who intends to develop new innovations, share common vision to turn that idea into reality and converting the value as created in the process of progress into an investable form and having an ambition to grow fast with scalable business model for maximum impact.

Start-ups are not just small companies; they are the seeds of future industries and economic growth. Here's why they matter:

- **Economic Growth**: Start-ups are engines of economic growth, creating jobs, stimulating innovation, and attracting investment.
- **Technological Advancement**: Many Start-ups are at the forefront of technological advancement, pushing the boundaries of what's possible and driving progress in various fields.
- **Market Competition**: Start-ups introduce competition, which often leads to better products, services, and pricing, benefiting consumers.
- **Global Influence**: Start-ups can disrupt industries on a global scale, bringing change that extends far beyond their local communities.

1 India's growing strides towards 10 trillion-dollar economy (www.investindia.gov.in).



A. Start-up India[2]

The Start-up India initiative was announced by Hon'ble Prime Minister of India, Shri Narendra Modi on August 15, 2015 wherein he stated that *"I see start-ups, technology, and innovation as exciting and effective instruments for India's transformation."*

Start-up India, launched in 2016, is a flagship initiative of the Government of India ("**GoI**"), intended to catalyse Start-up culture and build a strong and inclusive ecosystem for innovation and entrepreneurship in India that will drive sustainable economic growth and generate large scale employment opportunities. Further to this, an Action Plan for Start-up India was unveiled by Prime Minister of India on January 16, 2016. The Action Plan comprises of 19 action items spanning across areas such as *"Simplification and handholding"*, *"Funding support and incentives"* and *"Industry-academia partnership and incubation"*. These initiative and various related programs are managed by a dedicated Start-up India Team, which reports to the Department for Promotion of Industry and Internal Trade (DPIIT).

2 https://dpiit.gov.in/startup-india/startup-india-initiative.

DPIIT is mandated to coordinate implementation of Start-up India initiative with other Government Departments. Apart from DPIIT, the initiatives under Start-up India are driven primarily by five Government Departments viz. (i) Department of Science and Technology (DST); (ii) Department of Bio-technology (DBT); (iii) Ministry of Human Resource Development (MHRD); (iv) Ministry of Labour and Employment; and (v) Ministry of Corporate Affairs (MCA) and NITI Aayog.

Recognising the importance of Start-ups in driving innovation and economic growth, various ministries and departments have introduced schemes to provide financial, infrastructural, and regulatory support to Start-ups. The listed schemes cover sectors like technology, manufacturing, agriculture, healthcare, and more. A dedicated section on Central Government Schemes section has being hosted on the Start-up India Portal which provides a list of all the schemes initiated by the Government of India to support and promote Indian Start-ups from time to time and intends to acts as an integrated and one stop platform for Start-ups community in India and foster its eco-system.

B. DPIIT Start-up Recognition

There are currently 99,380 DPITT recognised Start-ups. Pursuant to the Start-up India Action Plan, Start-ups that meet the definition as prescribed under G.S.R. notification 127 (E)[3] are eligible to apply for recognition under the program and as mentioned below.

Eligibility Criteria for Start-up Recognition by DPITT:

- The Start-up should be incorporated as a private limited company or registered as a partnership firm or a limited liability partnership.
- Turnover should be less than Indian Rupees One Billion in any of the previous financial years.
- An entity shall be considered as a Start-up up to 10 years from the date of its incorporation.
- The Start-up should be working towards innovation/ improvement of existing products, services and processes and should have the potential to generate employment/ create wealth. An entity formed by splitting up or reconstruction of an existing business shall not be considered a “Start-up”.

3 https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/198117.pdf.

Company Age

Period of existence and operations should not be exceeding 10 years from the Date of Incorporation.

Company Type

Incorporated as Private Limited Company, a Regesterd Partnership Firm or a Limited Liability Partnership.

Annual Turnover

Should have an annual turnover not exceeding Rs. 100 crore for any of the financial years since its Incorporation.

Original Entity

Entity should not have been formed by splitting up or reconstructing an already existing business.

Innovative and Scalable

Should work towards development or improvement of a product, process or service and/or have scalable business model with high potential for creation of wealth and employment.

C. Tax Incentives

1. A recognised Start-up may apply for Tax exemption under section 80 IAC of the Income Tax Act. Post clearance for Tax exemption, the Start-up can avail tax holiday for 3 consecutive financial years out of its first ten years since incorporation.

   Eligibility Criteria for applying to Income Tax Exemption (80IAC):

   - The entity should be a recognized Start-up.
   - Only Private limited or a Limited Liability Partnership is eligible for Tax exemption under Section 80IAC.
   - The Start-up should have been incorporated after April 1, 2016.

2. A recognised Start-up may also apply for Angel Tax Exemption under Section 56 of the Income Tax Act, which is popularly known as "**Angel Tax**".

   Eligibility Criteria for Angel Tax Exemption under Section 56 of the Income Tax Act:

   - The entity should be a DPIIT recognized Start-up.
   - Aggregate amount of paid-up share capital and share premium of the Start-up after the proposed issue of share, if any, does not exceed INR 25 Crore.
   - Certain other conditions in terms of permissible investments.

3. A recognised Start-up is eligible for certain other tax benefits including but not limited to:

   - **Set-off of carried forward losses in case of change in ownership**: generally, in case there is a change in beneficial ownership of more than 51% (between the year in which loss was incurred and the year in which those losses are to be set-off), the set-off of carried forward losses is not allowed. However, recognized Start-ups are exempt from such a restriction, subject to satisfaction of other conditions prescribed.

   - **Deferral of ESOP tax**: deferral of taxation on exercise of stock-options until the sale of the shares acquired upon exercise.

   - **Capital gains rollover benefits**: tax exemptions to individuals / HUFs on investment of long-term capital gain in equity shares of Start-ups.

D. Other Incentives[4]

In addition to Tax exemptions, DPIIT recognised Start-ups can also get the following additional benefits under the Start-up India Initiative.

1. **Self-Certification**:

   - With an intend to reduce the regulatory burden on Start-ups and allowing them to focus on their core business and keep compliance costs low, Registered Start-ups shall be allowed to be self-certify compliance for 6 Labour Laws and 3 Environmental Laws through a simple online procedure wherein no inspections will be conducted for a period of 5 years in the case of labour laws and may be inspected only on receipt of credible and verifiable complaint of violation, filed in writing and approved by at least one level senior to the inspecting officer.

   - In the case of environment laws, Start-ups which fall under the 'white category' *(as defined by the Central Pollution Control Board (CPCB))* would be able to self-certify compliance and only random checks would be carried out in such cases.

2. **IPR Fast Tracking**:

   - With an intent to protect the innovative new ideas, products and process in form of registered patents to be filed in a smooth and simplified manner and thereby encouraging the Start-ups to innovate further and making their innovations financially viable, a Registered Start-ups can apply for patent application which can be fast-tracked for examination so that their value can be realised sooner.

   - Further, the SIPP (Start-Ups Intellectual Property Protection) scheme is being made available to DPITT recognised Start-ups, which provides financial and legal support to Start-ups for filing the patent application for any number of patents, trademarks or designs that a Start-up may file, securing and managing their intellectual property (IP) assets. Further, the scheme facilitated Start-ups in filing and processing of their patent, design or trademark application through the assistance of IP Facilitators, a significant increase in IP fillings by Start-ups the scheme was noted after successful implementation of SIPP.[5]

4 https://www.startupindia.gov.in/content/sih/en/startup-scheme.html.

5 https://www.pib.gov.in/PressReleasePage.aspx?PRID=1880465.

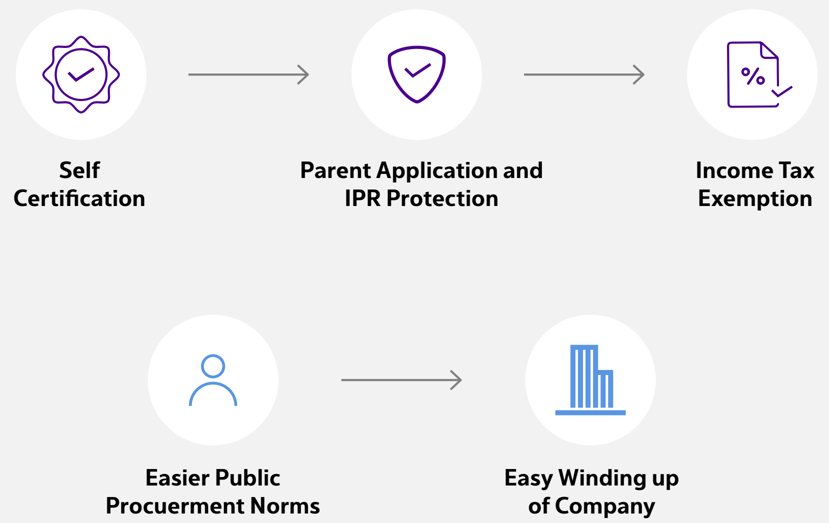
3. **Simplified Public Procurement**:

With an intent to make it easier for Start-ups to participate in the public procurement process and allow them to access another potential market for their products, including Government organisations, DPIIT Recognized Start-ups.

- can register as Seller on Government e Marketplace (GeM), an online procurement platform and the largest marketplace for Government Departments to procure products and services and can sell their products and services directly to Government entities.
- have been exempted from submitting Earnest Money Deposit (EMD) or bid security while filling government tenders.
- in the manufacturing sector are exempted from the criteria of *"prior experience/ turnover"* subject to requisite and required capability to execute the project as per stated quality standards or technical parameters and should have their own manufacturing facility in India.

4. **Easier Winding-up Process**:

With an intent to make it easier for Start-ups on winding-up their operations in event of any business failure and allowing the entrepreneurs to re-allocate capital and resources to alternate productive areas at a faster pace for innovation, DPIIT Recognized Start-ups having simple debt structures, or those meeting certain income specified criteria can be wound up within 90 days of filing an application for insolvency under the Insolvency and Bankruptcy Code, 2016 ("**IBC**") and an appointed insolvency professional and liquidator shall be responsible for the swift closure of the business, sale of assets and repayment of creditors in accordance with the distribution waterfall set out in the IBC validating the concept of limited liability in a truer sense.



E. Stages of Start-up Funding up to the Exit[6]

A broad-brush, indicative understanding of the various stages in the evolutionary life cycle of a Start-up are as under:

Pre-Seed Stage

- **Bootstrapping/Self-financing**: Bootstrapping a Start-up means growing the business with little or no venture capital or outside investment. It means relying on your savings and revenue to operate and expand. This is the first recourse for most entrepreneurs as there is no pressure to pay back the funds or dilute control of your Start-up.
- **Friends & Family**: This is also a commonly utilized channel of funding by entrepreneurs still in the early stages. The major benefit of this source of investment is that there is an inherent level of trust between the entrepreneurs and the investors.
- **Business Plan/Pitching Events**: This is the prize money/grants/financial benefits that are provided by institutes or organizations that conduct business plan competitions and challenges. Even though the quantum of money is not generally large, it is usually enough at the idea stage. What makes the difference at these events is having a good business plan.

Seed Stage

- **Incubators**: Incubators are organizations set up with the specific goal of assisting entrepreneurs with building and launching their Start-ups. Not only do incubators offer a lot of value-added services (office space, utilities, admin & legal assistance, etc.), they often also make grants/debt/equity investments.
- **Government Loan Schemes**: The government has initiated a few loan schemes to provide collateral-free debt to aspiring entrepreneurs and help them gain access to low-cost capital such as the Start-up India Seed Fund Scheme and SIDBI Fund of Funds.
- **Angel Investors**: Angel investors are individuals who invest their money into high-potential Start-ups in return for equity. One can reach out to angel networks such as Indian Angel Network, Mumbai Angels, Lead Angels, Chennai Angels, etc., or relevant industrialists for this.
- **Crowdfunding**: Crowdfunding refers to raising money from a large number of people who each contribute a relatively small amount. This is typically done via online crowdfunding platforms.

Series A Stage

- **Venture Capital Funds**: Venture capital (VC) funds are professionally managed investment funds that invest exclusively in high-growth Start-ups. Each VC fund has its investment thesis — preferred sectors, stage of the Start-up, and funding amount — which should align with your Start-up. VCs take Start-up equity in return for their investments and actively engage in the mentorship of their investee Start-ups.

6 https://www.startupindia.gov.in/content/sih/en/funding.html.

- **Banks/Non-Banking Financial Companies (NBFCs)**: Formal debt can be raised from banks and NBFCs at this stage as the Start-up can show market traction and revenue to validate its ability to finance interest payment obligations. This is especially applicable for working capital. Some entrepreneurs might prefer debt over equity as debt funding does not dilute equity stake.
- **Venture Debt Funds**: Venture Debt funds are private investment funds that invest money in Start-ups primarily in the form of debt. Debt funds typically invest along with an angel or VC round.

Series B, C, D & E

- **Venture Capital Funds**: VC funds with larger ticket sizes in their investment thesis provide funding for late-stage Start-ups. It is recommended to approach these funds only after the Start-up has generated significant market traction. A pool of VCs may come together and fund a Start-up as well.
- **Private Equity/Investment Firms**: Private equity/Investment firms generally do not fund Start-ups. However, lately some private equity and investment firms have been providing funds for fast-growing late-stage Start-ups who have maintained a consistent growth record.

Exit Options

- **Mergers & Acquisitions**: The investor may decide to sell the portfolio company to another company in the market. In essence, it entails one company combining with another, either by acquiring it (or part of it) or by being acquired (in whole or in part).
- **Initial Public Offering (IPO)**: IPO refers to the event where a Start-up lists on the stock market for the first time. Since the public listing process is elaborate and replete with statutory formalities, it is generally undertaken by Start-ups with an impressive track record of profits and who are growing at a steady pace.
- **Selling Shares**: Investors may sell their equity or shares to other venture capital or private equity firms.
- **Buybacks**: Founders of the Start-up may also buy back their shares from the fund/investors if they have liquid assets to make the purchase and wish to regain control of their company.

Start-ups Ecosystem – A Global Outlook

The global Start-up ecosystem continues to evolve and flourish as we move further into the 21st century. Start-ups have become a driving force for innovation, job creation, and economic growth across the world. With advancements in technology, increased access to funding, and a growing entrepreneurial spirit, the outlook for Start-ups remains highly promising.

Many regions and countries are actively fostering their Start-up ecosystems through government initiatives, business incubators, and accelerators, creating a conducive environment for new ventures to thrive. Additionally, the COVID-19 pandemic accelerated digital transformation and remote work, further fuelling the growth of tech Start-ups and digital solutions. As a result, the global Start-up landscape is more interconnected and diverse than ever before, with Start-ups working on everything from sustainability and healthcare to artificial intelligence and blockchain, poised to address the world's most pressing challenges and shape the future of various industries. In this dynamic and ever-expanding ecosystem, the potential for innovative disruption and growth remains a constant, making it an exciting time for Start-ups worldwide.

The Start-up revolution has transcended its traditional confines within Silicon Valley or the United States. It has evolved into a truly global phenomenon, with burgeoning innovation hubs spanning the globe. These growth centres can be found in diverse locations, including Stockholm, Berlin, Bangalore, London, Helsinki, Tel Aviv, Singapore, Beijing, and Tokyo. Notably, the Start-up culture is not limited to developed regions alone; many emerging economies have also emerged as vibrant Start-up ecosystems. They host thriving networks of incubators and accelerators, providing a rich breeding ground for a wide array of entrepreneurial ideas to flourish.

Additionally, governance globally has paved the way for cross-border investments and collaborations, enabling Start-ups to access diverse markets and funding sources. This interconnected global network has opened opportunities for Start-ups to scale rapidly and has amplified the dissemination of ground-breaking technologies and disruptive solutions. Further, global governance has created a more conducive environment for Start-ups by promoting policies and regulations that streamline business operations, reduce bureaucratic red tape, and facilitate international trade.

2021 was a benchmark year for tech Start-ups, with widespread global growth. The trend continued through the first quarter of 2022, after which the impacts of global conflict, supply-chain disruptions, the European energy crisis, rising inflation and interest rates led to uncertainty and unstable markets. However, midway through 2023, inflation appears to be slowing, and economic growth appears to be holding up.[1]

1 The Global Start-up Ecosystem Report 2023 released by Start-up Genome, accessed from: https://startupgenome.com/report/gser2023.

Global Start-up Ecosystem Ranking 2023[2]

SN	Ecosystem	Overall Ranking (2023)
1	Silicon Valley	1
2	New York City	2 (tied)
3	London	2 (tied)
4	Los Angeles	4
5	Tel Aviv	5
6	Boston	6
7	Beijing	7
8	Singapore	8
9	Shanghai	9
10	Seattle	10
11	Washington, D.C	11
12	Seoul	12
13	Berlin	13
14	Amsterdam-Delta	14
15	Tokyo	15
16	San Diego	16
17	Toronto-Waterloo	17
18	Paris	18
19	Chicago	19
20	Sydney	20 (tied)
21	Bengaluru-Karnataka	20 (tied)
22	Stockholm	22
23	Miami	23
24	Delhi	24
25	Austin	25

A. US Start-up Ecosystem

In a world marked by perpetual change and the occasional fluctuations in the global economic and geopolitical landscape, one undeniable constant prevails: the enduring and substantial impact of the United States' Start-up ecosystem on a global scale. The US, when viewed through the lens of Start-ups, continues to shine as the ultimate land of opportunity, serving as the epicentre of unparalleled innovation and creative disruption in the realm of technology.

2 The Global Start-up Ecosystem Report 2023 released by Start-up Genome, accessed from: https://startupgenome.com/report/gser2023.

Distinguishing itself on the global stage, the US has forged an open and expansive version of the internet, in stark contrast to the more closed digital systems emerging in various parts of the world. This openness has fostered an environment that attracts foreign entrepreneurs, who recognize that the United States stands out as the premier destination for nurturing and expanding a global enterprise. This recognition is founded on the conviction that the nation's Start-up ecosystems provide the ideal launchpad for scaling and growing a business with worldwide reach.

One way the United States encourages people to take big risks is through its flexible bankruptcy laws. These laws make it easy for entrepreneurs to restart if their first attempt fails. In other countries, failing in business can harm your finances and reputation, but in the US, it's not as bad.

The top US Start-up ecosystems offers new companies everything they require: access to funding through a large network of VCs, angel investors, and mentorship in high quality accelerators.[3]

B. UK Start-up Ecosystem

The United Kingdom has positioned itself as a global leader in entrepreneurship and scientific innovation, drawing top-tier talent to its primary Start-up hub, London. With world-class scientific infrastructure at its disposal and the presence of renowned academic institutions like Oxford and Cambridge, the UK has expanded its list of thriving Start-up ecosystems. These smaller university cities are now collaborating with the highly prosperous fintech hub of London, resulting in a diverse and nationally distributed network of top-tier Start-up environments. London, as one of the world's most cosmopolitan and successful international cities, holds a magnetic appeal for ambitious entrepreneurs seeking to establish their ventures on the global stage. If the UK retains its ability to continue being the ecosystem of choice in Europe, and continues to leverage its top-rated universities, pro-business environment, and cutting-edge innovation, the UK Start-up ecosystem should continue to develop.

It is important not to underestimate the challenges presented in the aftermath of Brexit. The UK possesses an exceptional Start-up ecosystem primarily because of its success in attracting foreign entrepreneurs, many of whom come from Europe thanks to the ease of relocation and integration for English speakers. However, Brexit has complicated the process of relocating for European entrepreneurs and resolving this potential damage in the long run will require significant efforts from the government.[4]

3 Global Start-up Ecosystem Index 2023, released on May 30, 2023: www.Start-upBlink.com.

4 Global Start-up Ecosystem Index 2023, released on May 30, 2023: www.Start-upBlink.com.

C. Israel Start-up Ecosystem

Israel has earned its reputation as the "Start-up nation" for good reason. Despite being a small country, it has managed to make a significant impact on the global Start-up ecosystem. Over the years, the Israeli Start-up ecosystem has not only survived but thrived, even in the face of numerous external challenges. These challenges have only served to enhance the potency and innovation capabilities of the Israeli ecosystem. By cultivating a strong environment of creativity and innovation, Israel has achieved remarkable breakthroughs in areas such as internet security, big data, healthcare, agriculture, biotechnology, and water tech. AI and cybersecurity are the top industries in Israel. It ranks third in the world by the number of AI and ML Start-ups, whereas one in three cybersecurity unicorns in the world is an Israeli company. The success in the Start-up field can be attributed to impressive investments in R&D, strong support from Government, deep rooted entrepreneurial culture and strong connections with their overseas diaspora.[5]

D. Singapore Start-up Ecosystem

Singapore serves as a remarkable model for innovation and is an excellent illustration of a relatively small country that surpasses expectations. The country has emerged as a favoured destination for Start-ups opeating in Asia, primarily due to its stable financial system, business-friendly approach, and favourable tax policies. Given Singapore's limited market and population, the growth of its ecosystem relies heavily on expanding overseas. This unique characteristic grants the ecosystem a distinct regional perspective from the very beginning. The nation's ability to generate billion-dollar valuations attests to this success.

Several factors have contributed to the growth of vibrant Start-up ecosystem in Singapore. The city is able to attract foreign Start-ups, foreign venture capital, and the research activities of foreign companies because of its sound regulatory and legal environment. Rules and legal procedures provide clarity on business establishment and ownership, corporate governance, shareholder rights, and bankruptcy.[6]

The Singapore ecosystem boasts a growing number of accelerators and support networks. The country also has a strong digital infrastructure and plenty of investment sources. On top of this, the country's universities are involved in the Start-up scene, not only by training a highly qualified workforce for the R&D sector, but also in connecting programs to Start-ups and encouraging entrepreneurship on campuses.[7]

E. Chinese Start-up Ecosystem

The progress China has made in transitioning from a low-tech developing nation to a cutting-edge technological powerhouse is truly inspiring. Technology development is a strategic priority for the country, and the government invests heavily in establishing state-of-the-art tech hubs to position itself as a global leader. China's most notable unicorns are focused on automation and AI, with a strong presence of Hardware & IoT in the impressive Shenzhen Start-up ecosystem.

5 Lessons from Tel Aviv: What Has Fueled Israel's Start-up Ecosystem's Growth accessed from: https://therecursive.com.

6 Singapore's Ecosystem for Technology Start-ups and Lessons for its Neighbors by Nitin Pangarkar and Paul Vandenberg.

7 Global Start-up Ecosystem Index 2023, Released on May 30, 2023: www.Start-upBlink.com.

However, China has made a deliberate decision to keep its ecosystems primarily focused on the domestic market and has not opened up globally. Most Chinese Start-ups concentrate solely on the Chinese economy, resulting in a limited international presence. Additionally, Chinese tech users are isolated from the global internet by the Great Firewall, which regulates online traffic within China.

Despite these limitations, China's ecosystems have achieved impressive growth and have been instrumental in creating a remarkable number of Start-ups and unicorns, owing to the sheer size of the country's economy. However, the current inward trend restricts the ability of China's Start-up ecosystem to explore other technology markets and strive for global leadership status. Much of the growth potential of Chinese ecosystems has already been realized, and this inward focus hinders their ability to expand into other tech markets and achieve global dominance. In the Global Start-up Ecosystem Ranking 2023, two Chinese cities featured in the top 30 global Start-up ecosystems namely Beijing and Shanghai at 7th and 9th position respectively.

Indian Start-up Ecosystem

India has recently surpassed China to become the most populous country in the world. With a current population of over 1.4 billion and steadily growing, coupled with a high percentage of working-age individuals, India boasts the largest talent pool globally. The country has emerged as a global leader in technology services and experienced a significant rise in the number of unicorns in recent years. The remarkable growth of India's Start-up scene can primarily be attributed to the size of its domestic market and the thriving IT industry. These Start-up ecosystems act as a driving force for the Indian economy, enhancing productivity and bringing about transformative changes.[1]

In addition to its population advantage, the Indian government has made significant investments in infrastructure and implemented policies and reforms aimed at promoting growth and attracting investments. This has transformed India into a prominent hub for manufacturing and technology. The national budget for 2023 further intends to capitalize on this growth by incorporating measures to enhance entrepreneurial success. These measures include simplifying the Know Your Customer (KYC) process, introducing a unified filing system to improve the ease of doing business, providing tax benefits for eligible Start-ups, and establishing 30 Skill India International Centres across the country. India had relatively relaxed COVID-19 policies, which helped the nation continue its rapid growth. Policies including the Start-up India *(Government's flagship start-up initiative)* as well as Make in India initiative further catalyse the Start-up scene. India's successful Start-ups and unicorns are focusing on the massive potential of the local market. However, for India to achieve a status of a global tech hub, its Start-ups will have to focus more on regional and global markets.

The talent of Indian entrepreneurs is evident through the presence of CEOs leading companies like Alphabet, Adobe, and Microsoft. Though, this also highlights the significant issue of brain drain, as some of India's top talents are opting to relocate to the western countries. The scarcity of high-paying jobs, coupled with India's infrastructural problems, are contributing to entrepreneurial talent relocating overseas.

Over the last decade or so, the Start-up ecosystem has witnessed tremendous amount of activity in terms of growth of new Start-ups, increased funding to Start-ups, influx of global investors, development of regulatory regime, business friendly policies, global mergers and acquisitions, and internationalization. The Start-up economy has transformed India has a global hub for innovation and entrepreneurship. These new age tech Start-ups are not only developing innovative solutions and technologies but are generating large-scale employment. Incubators and accelerators are playing a crucial role in India's Start-up ecosystem by offering Start-ups valuable resources and support, such as mentorship, funding, and networking opportunities.

In recent years, the Indian Start-up scene has witnessed a shift in focus towards digital solutions and fintech. This shift has been driven by factors such as increased smartphone penetration, government initiatives, and changing investor preferences. While success of ecommerce companies remains significant, fintech Start-ups working on new banking models have attracted substantial investment and attention. The US continues to be the biggest source of FDI for Indian Start-ups, further highlighting the global interest in India's fintech sector.

1 Global Start-up Ecosystem Index 2023, released on May 30, 2023: www.Start-upBlink.com.

India has emerged as the 3rd largest ecosystem for Start-ups globally with over 99,380 DPIIT-recognized Start-ups across 670 districts of the country as of September 26, 2023.[2] India ranks #2nd in innovation quality with top positions in the quality of scientific publications and the quality of its universities among middle-income economies. Not only is India the third largest Start-up ecosystem in the world, it also has the third highest number of unicorns globally. This is testimony to India's rise as a global Start-up and innovation hub.

According to an Invest India report,[3] Indian Start-up Ecosystem has seen exponential growth in past few years (2015-2022):

- 15X increase in the total funding of Start-ups
- 9X increase in the number of investors
- 7X increase in the number of incubators

A major push from the Government came in the year 2016 with the launch of Start-up India initiative. This flagship initiative was launched with the objective of building a strong eco-system for nurturing innovation and Start-ups in the country, which would in turn drive sustainable economic growth and generate large scale employment opportunities.

Since the inception of the initiative:

- There are over 99000+ Start-ups recognized by the government of India as of May 2023
- 49% of them having a base in Tier 2 - Tier 3 cities
- These Start-ups are spread over 669 districts from 36 States and Union Territories of India
- As of March 31, 2023, India is home to 108 unicorns with a total valuation of $ 340.80 Bn. Out of the total number of unicorns, 44 unicorns with a total valuation of $ 93.00 Bn were born in 2021 and 21 unicorns with a total valuation of $ 26.99 Bn were born in 2022
- 57 Regulations have been simplified for Start-ups

Although significant growth has been observed in the Indian Start-up ecosystem, it is accompanied by various challenges. Despite the overall positive narrative, India is currently facing a slowdown. In 2021, India witnessed the creation of a record-breaking 36 unicorns and raised a total of USD 72 billion in exits. However, in 2022, the number of unicorns decreased by 33% to 24, and exits declined to USD 5.5 billion.[4] Start-up enterprises frequently encounter hindrances like regulatory intricacies, talent recruitment, scalability issues, and market access limitations. Nevertheless, it's important to note that these challenges also double as opportunities for fostering innovation and entrepreneurial endeavours. By effectively tackling these obstacles, Start-ups can unleash their full potential and play a pivotal role in advancing the overall development of the ecosystem.

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2 https://www.startupindia.gov.in.

3 https://www.investindia.gov.in/indian-unicorn-landscape.

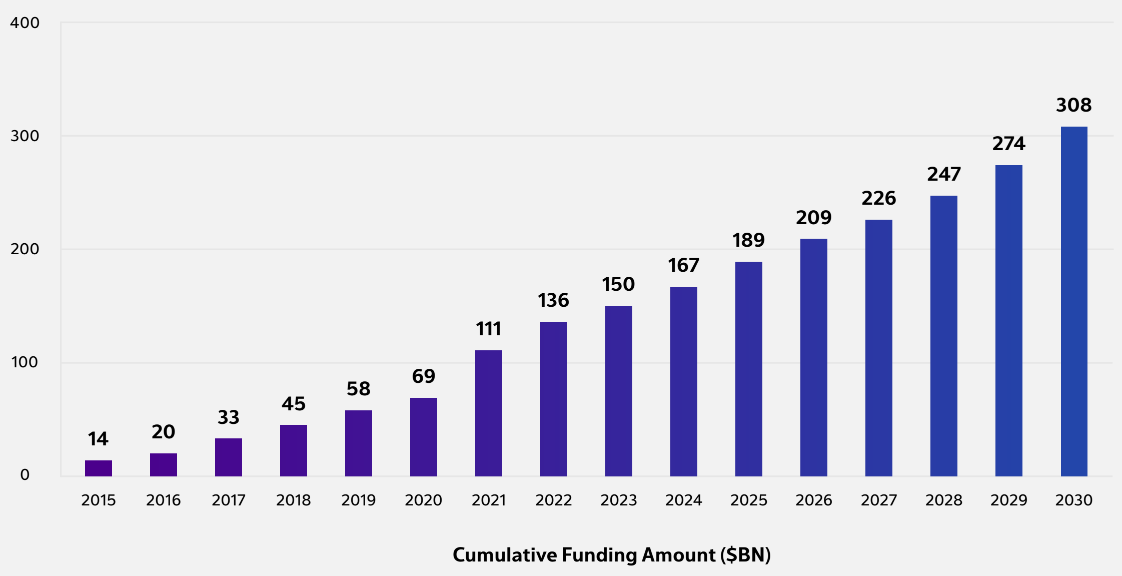
4 The Global Start-up Ecosystem Report 2023 released by Start-up Genome, accessed from: https://startupgenome.com/report/gser2023.

As the landscape of Start-ups undergoes ongoing transformation, it has become increasingly imperative to give precedence to the development of sound governance principles. Sound governance assumes a pivotal role in ensuring transparency, accountability, and ethical behaviour, thereby contributing to the enduring sustainability and triumph of the industry. Embracing and putting into practice these tenets of proper governance can further fortify the Start-up ecosystem and private capital sector in India as the favored destination for investments. Furthermore, the adoption of robust governance practices can effectively mitigate the risks associated with poor returns and enhance the likelihood of a Start-up's triumph. Given the continuous influx of capital into the Indian Start-up realm, there is a mounting concern regarding the lack of adherence to corporate governance standards. Several recent incidents have brought corporate governance violations into the limelight, underscoring the importance of instituting and enforcing strong corporate governance practices to safeguard the rights and interests of all stakeholders involved.

Overall, the evolution of the Start-up ecosystem in India has been remarkable, and with continued support from the government and investors, it is poised for further growth and success in the future.

Total Capital Inflow in Indian Start-ups Estimated to Touch $300Bn+ in 2030

In 2030, total cumulative capital invested in indian Start-ups will more than double from $150 Bn (2023) to $308Bn (2030)



Source: Inc42

Note: Data from calender year Q2-2023 to 2030 is estimated using time series analysis (exponential smoothing) based on quarterly timestamp since Q1-2014.

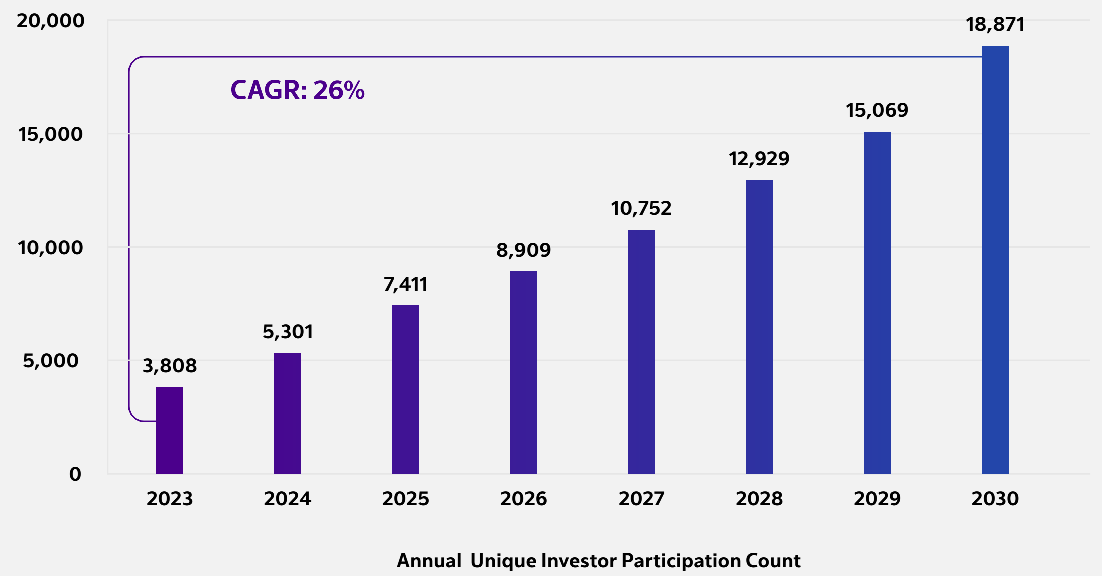
Indian Start-up Funding and Deals Landscape

Start-up Funding		M&As & Exits		Unicorns & Soonicorns	
$141 BN +	Total Funding	1.2K +	Total Deal Count	108	Indian Unicorns
5.3K +	Unique Funded Start-ups	6 Bn +	Spent on M&As	106	Indian Soonicorns
$5.7BN +	Total Seed Stage Funding	18	Total Start-up IPOs	$345BN +	Combined Valuation of Indian Unicorns
$34BN +	Total Growth Stage Funding	22	Upcoming Start-up IPOs	$34BN +	Combined Valuation of Indian Soonicorns

Source: Inc42

Note: Based on Indian Start-up Funding Recorded between 1st January 2014 and May 2023.

Annual Investor Participation in Start-up Funding to Grow at 26%

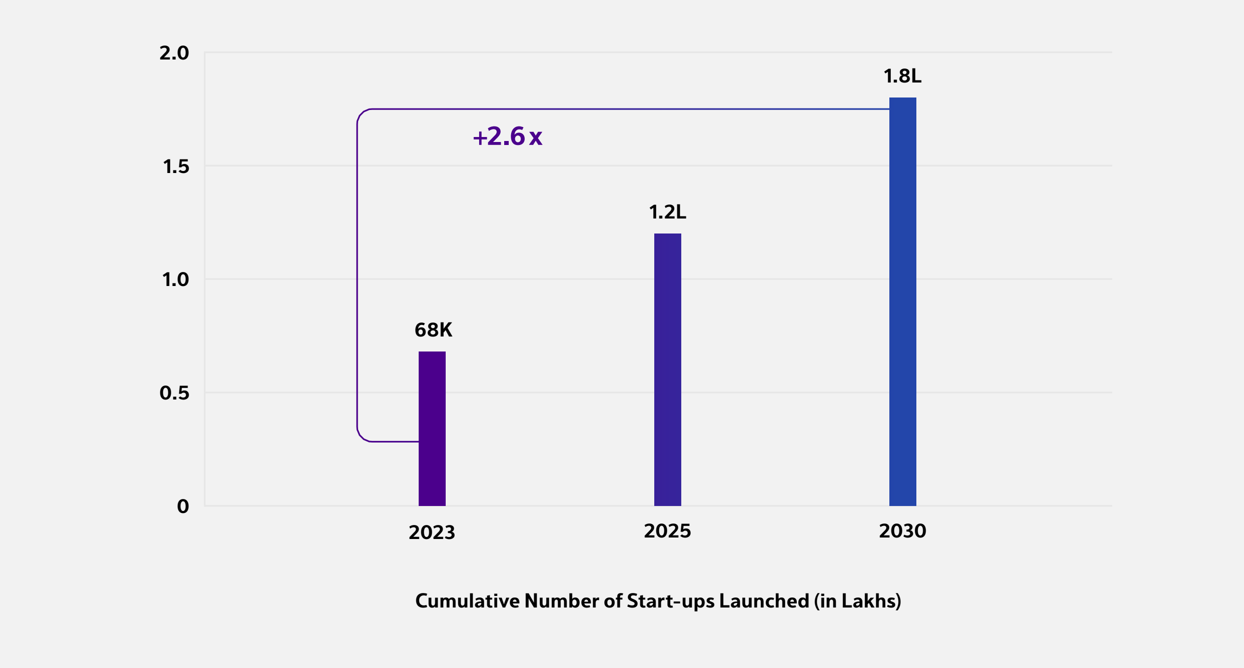


Source: Inc42

Note: Values for all the calendar year mentioned are estimated.

India to Have Over 1.8 Lakh Start-ups by 2030

The total number of tech Start-ups in india will grow 2.6x from 68k (2023) to 1.8L (2030)



Source: Inc42

Start-up Investors In India: An Overview (2014 to 2023)

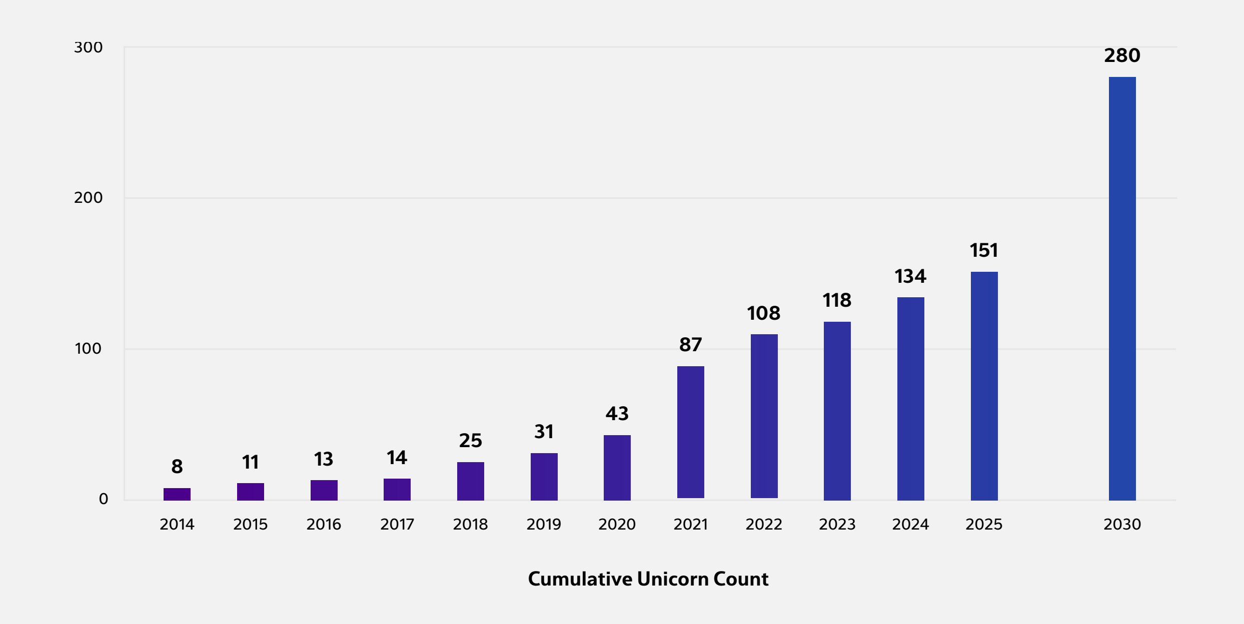
	Total Number	Deal Participation	Start-ups Backed	Preferred Sector	Preferred Hub
VC/PE	2.5k	7.7k+	4.4k+	Enterprisetech	Bengaluru
Corporates and CVCs	800+	990+	750+	Fintech	Bengaluru
Accelerators and Incubators	300+	760+	590+	Fintech	Bengaluru
Family Offices	300+	190+	160+	Fintech	Bengaluru
Angel Networks and Syndicates	125+	540+	470+	Enterprisetech	Delhi NCR
Government Entity	50+	180+	170+	Healthtech	Bengaluru
Venture Debt	50+	300+	220+	Ecommerce	Bengaluru

Source: Inc42

Note: The deal participation and Start-ups backed count are not mutually exclusive. Funding data (column 2 to 5) is from 2014 to may 2023 and based on publicly disclosed deals.

India Expected to Produce 280+ Unicorns by 2030

The Total Number of Unicorns is expected to increase 2.4 times by 2030 from 2023



Source: Inc42

The Essential Role of Governance in the Start-up Ecosystem

Good governance is of paramount importance in the Start-up ecosystem, serving as the bedrock upon which the success and longevity of these innovative enterprises rest. Start-ups, by their very nature, are often characterized by agility, creativity, and a propensity for risk-taking. However, as they grow and mature, they must transition from a culture of flexibility to one rooted in governance principles. This evolution necessitates a proactive approach in instilling a culture of responsible governance right from the Start-up's inception.

In the vibrant Start-up ecosystem, the involvement of private equity and venture capital firms is essential. Nonetheless, divergent perspectives can occasionally surface among founders, executives, and investors. Implementing sound governance practices serves as the cornerstone for Start-ups to improve communication, streamline decision-making processes, and maintain robust and harmonious relationships with their investors. This, in turn, fosters an ecosystem with lasting sustainability.

Promoting and nurturing good governance practices stands as a vital imperative for Start-ups in India, contributing to the development of a resilient and sustainable business environment. By giving precedence to responsible behaviour, transparency, and accountability, Start-ups can cultivate trust, attract investments, and fuel their long-term growth prospects. It's essential to acknowledge that while challenges persist on this journey, Start-ups must fully grasp the significance of good governance and remain committed to diligently adapting to evolving requirements.

One key aspect of governance in Start-ups is transparency. It ensures that stakeholders, including founders, investors, and employees, are well-informed about the company's operations, financial health, and decision making processes. This transparency builds trust and confidence, attracting investors and customers who value openness. Furthermore, good governance sets clear rules and guidelines for decision-making, risk management, and compliance with legal and ethical standards. It not only helps Start-ups avoid costly legal and reputational pitfalls but also aids in securing funding and partnerships. Overall, a commitment to good governance promotes accountability, reduces risks, and enhances the Start-up's credibility and attractiveness in the eyes of potential investors and partners. As the Start-up sector continues to grow and evolve, governance remains an indispensable tool for ensuring responsible growth and long-term success.

The finest Start-ups of the world embrace good governance practices as necessary condition for success!

A. Instilling a Culture of Governance within a Start-up from an Early Stage

Governance should be woven into the fabric of a company, not just something that is stacked on at the end. This means that companies need to integrate it into its investment and governance documents from the start.[1]

1 https://www.ringcentral.com/us/en/blog/esg-for-Start-ups.

With the chances of failure so high for Start-up companies, there is pressure for economic survival, and governance or, compliance strategies is typically not something investors or founders are determining as mandatory. Instead of having to strike a balance between the pressures of economic survival (such as establishing product-market fit, acquiring initial customers, attracting talent and investors) and integrating governance strategies, companies that initially embedded governance concerns into their mission, problem statement, or business model are the ones who maintain the most developed governance strategies as they expand. Good governance should be an integral part of a company's core values and founding principles and should never be viewed as mere marketing material or an additional corporate social responsibility (CSR) initiative.

A founder should consider good governance as the cornerstone of its business operations. It encompasses a multitude of crucial elements that define Start-up's modus operandi – how it will be managed, how decisions are reached, the prescribed processes, risk management strategies, and safeguards for its staff against potential legal repercussions. Good governance essentially serves as the guiding compass for the entire organization, outlining roles, work methodologies, and the collective aspirations of the business.

Essentially, good governance serves as the foundation for operating any business. Devoting time and consideration to it right from the company's inception yields several benefits. It not only provides a clearer vision of the Start-up's business objectives but also fosters belief and commitment among all those involved in the venture

By laying down structured processes and implementing supportive measures, a founder can cultivate a constructive culture and organizational behaviour. The Start-up becomes an attractive prospect for potential employees who wish to join and contribute to its growth. Additionally, it becomes an appealing investment opportunity for investors, thereby equipping the business with the resources it needs to flourish. This, in turn, allows the founder to continue attracting top-tier talent as the business expands.

As torchbearer of these standards, founders must not only establish them but also exemplify them through their conduct and leadership. Failing to do so can lead to the creation of a toxic work culture, significantly impeding the Start-up's progress and potentially culminating in business failure.

An institutional investor such as a venture capitalist typically conducts a financial and legal due diligence on the Start-up in order to uncover the risks pertaining to the Start-up. Issues that come up often relate to corporate including governance, labour law and foreign exchange law compliances. In order to keep the Start-up's valuation high, it is essential for the Start-up to ensure that the Start-up is managed in a manner compliance with applicable laws from an early stage.

The due diligence process has become even more relevant in recent times as both investors, and financiers have grown cognizant of potential risks involved in investing in a Start-up — many investors having already suffered from issues in exiting their previous investments. It is therefore essential for any Start-up anticipating investment to be financially and legally sound and to have the cleanest track record possible in terms of corporate governance.[2]

2 Research Paper of Nishith Desai Associates - ESG-The New Age Value Creator issued in June 2023.

Here are some ways in which founders can initiate the development of a governance culture in their organization:

1. **Establish a Diverse Mix of Board of Directors**: Establishing a board with diversity in terms of industry expertise, business acumen, and governance knowledge is essential. This diverse composition ensures well-informed decision-making that benefits all stakeholders.

2. **Formulate Governance Policies and Procedures**: These policies should include aspects such as risk management, financial reporting, and ethical conduct. Establishing clear guidelines helps the organization stay on course and prevent potential legal or reputational risks. By adopting a values-driven approach, companies can create a governance framework that not only contributes to financial success but also addresses pressing global challenges.

3. **Recruit Experienced Leaders**: Start-ups can gain substantial advantages by bringing on board experienced leaders with a proven track record in governance and business management. These leaders play a essential role in fostering a culture of accountability, transparency, and ethical behaviour within the organization. Top executives can stay informed about developments in the governance landscape by acquainting themselves with fundamental concepts, standards, frameworks, and staying updated on industry trends and updates.

4. **Foster a Culture of Open Communication**: Encouraging open communication within the organization empowers employees to voice concerns when they notice actions misaligned with the company's values and policies. Creating a safe environment for dialogue enables the early identification and resolution of potential issues.

5. **Regularly Audit Governance Practices**: Scheduled audits of governance policies and procedures are essential for ensuring alignment with industry standards and best practices. These audits reveal areas for enhancement and confirm the organization's adherence to legal and regulatory requirements.

6. **Respond to Investor Demand**: There is a growing trend among investors to prioritize responsible investments, leading many to invest in funds that consider governance factors when constructing their portfolios. Issues like diversity and inclusion, human rights, climate change, business ethics, and corporate governance have gained prominence among investors. They now insist that these factors be integral to investment decision-making.

7. **Ensuring Accountability and Transparency**: Stakeholders, including investors, employees, customers, and partners, need assurance that the company is managed ethically and responsibly. Implementing governance mechanisms, such as regular financial reporting, internal controls, and compliance frameworks, enhances transparency and builds trust. By establishing accountability, Start-ups can attract funding, retain talent, and forge long-lasting relationships with key stakeholders.

8. **Mitigating Risks and Enhancing Resilience**: Start-ups operate in a high-risk environment where uncertainty and volatility are constants. Effective governance helps identify and mitigate risks, protecting the company from potential pitfalls. By implementing risk management frameworks, Start-ups can anticipate challenges, develop contingency plans, and respond swiftly to market disruptions. Robust governance structures enable Start-ups to adapt to changing circumstances, enhancing their resilience and ensuring continuity during challenging times.

Thus, good governance should not be an afterthought but rather should occupy a central place in a founder's mindset and ethos as they embark on their Start-up journey.

B. Self-regulation for a Founder

Self-regulation entails organizations monitoring their own compliance with legal, ethical, and safety standards, rather than relying on external entities like government regulators to oversee and enforce these standards. In the context of Start-ups, self-regulation offers the adaptability and nimbleness required to swiftly respond to market fluctuations and innovation cycles. It stands as an indispensable element in cultivating a robust corporate governance culture within any nation.

It is a practice deeply ingrained in an organization's ethos, infusing every decision with the core principles of governance. Nonetheless, self-regulation extends beyond just flexibility; it cultivates a culture of responsibility and transparency within the organization. By assuming ownership of their regulatory obligations, Start-ups can establish credibility and trust among their stakeholders, including investors, customers, and employees.

It is key to building a strong corporate governance culture because it allows companies to regulate their own behaviour and operations, enabling them to set their own standards and guidelines for behaviour and hold themselves accountable for meeting those standards. By doing so, such companies can build trust with stakeholders and demonstrate their commitment to ethical and responsible behaviour.

However, the path to self-regulation is not without its obstacles. It necessitates a strong internal governance framework, a comprehensive grasp of the regulatory landscape, and a commitment to ethical business practices. Additionally, Start-ups must strike a balance between the imperative for agility and the duty of self-governance.

The broader ecosystem also plays a role in supporting this transition towards self-regulation. This encompasses investors who can promote self-regulation among Start-ups by integrating it into their investment criteria, as well as industry associations that can offer guidance and resources to Start-ups navigating the self-regulation journey.

As we peer into the future, self-regulation may emerge as a crucial factor in the triumph and sustainability of Start-ups in India. When Start-ups can effectively regulate themselves, the likelihood of unethical or illegal behaviour decreases, reducing the need for government intervention. This, in turn, fosters a more streamlined and efficient business environment, allowing them to operate without unnecessary regulatory burdens.

Lastly, in the words of Mr. Amitabh Kant, India's G20 Sherpa *"The government must remain at an arm's length. If the government gets into start-up regulations, they'll finish off these start-ups ... So founders must act towards being self-regulating."*[3]

3 https://www.bqprime.com/business/Start-ups-must-self-regulate-says-india-led-g20-group.

C. Responsible Business Leadership

Responsible Business Leadership goes beyond merely *"doing good"*; it's an integral part of the core business strategy. It encompasses the everyday work of the people, not just their actions when volunteering. It revolves around the concept of leading in a manner that fosters both the growth of Start-ups and a positive societal impact, all the while upholding the principles of the *triple bottom line*, which encompasses *people*, *profits*, and *the planet*. This is achieved through the deliberate and consistent implementation of a world-class governance framework, right from the inception of the Start-up.[4]

Owning a company brings with it a multitude of responsibilities, extending far beyond the confines of one's business operations to influence the wider world. Whether it's ensuring the well-being and livelihoods of employees, the satisfaction and safety of customers, or the impact business has on the society and the environment, corporate actions resonate far and wide.[5]

As the world evolves, presenting new challenges and opportunities, the essential skill for future corporate leaders will be the ability to manage their businesses responsibly and with social consciousness. Being a responsible business starts with managing the business with *ethics* and *integrity*, guided by the organization's purpose and values. Ethical business leaders leverage rapidly advancing emerging technologies to drive innovation, benefiting not only their shareholders but also their stakeholders, society, and the environment as their Start-ups expand into prominent global, publicly traded companies. It is crucial to emphasize that the integrity of good governance must never be compromised to facilitate growth, a lesson underscored by numerous remarkable founder-leaders from India and across the globe.

As the Indian Start-up ecosystem continues to expand and thrive, it becomes imperative for entrepreneurs to concentrate on constructing businesses that are both sustainable and capable of significant contributions to the nation's economic development.

D. Environmental Responsibility

The significance of "**ESG**" or "**Environmental, Social, and Governance**" as a prominent current market trend cannot be underestimated. Businesses also have a social responsibility to the wider world. As companies grow, their impact on people's lives extends further. The concept of businesses being careful about and accountable for their societal and environmental impact has gained substantial traction. This represents a modern iteration of inclusive capitalism, acknowledging the value of generating sustainable benefits for all stakeholders, in addition to delivering returns for shareholders.

Many companies are now adopting greener initiatives, not only to combat climate change but also to reduce costs, enhance their brand image, and foster innovation. Corporate social responsibility (CSR), such as implementing environmentally friendly policies, can have multiple benefits, both from an ethical and pragmatic perspective.

4 Think Tank Recommendations on Corporate Governance for Indian Start-ups, available at: https://www.startup20india2023.org.

5 https://www.hult.edu/blog/responsible-leadership-and-its-role-in-business.

Every business, regardless of its size, leaves a carbon footprint. Efforts to reduce this footprint not only save costs but also attract customers who appreciate a socially conscious philosophy. Although it takes time, effort, and investment to see results, the collective actions of many businesses can lead to substantial positive changes.

In an era marked by environmental challenges and a growing sense of urgency to address them, Start-ups are emerging as crucial players in the quest for sustainability. While they may be small in size, the potential impact of Start-ups on the environment is significant. Environmental governance by Start-ups is not just a trend; it's a necessity.

As Start-ups continue to innovate and grow, their commitment to environmental governance becomes increasingly crucial. The small steps they take today can lead to giant leaps for the planet tomorrow. In a world that urgently needs sustainable solutions, Start-ups can be the catalysts of change, leading us toward a greener, more promising future.

E. Identifying Key Stakeholders in the Start-up Ecosystem and Their Roles in Governance

A strong Start-up ecosystem has the potential to generate remarkable success stories, from unicorns to massive corporations. A Start-up ecosystem is a complex network of various stakeholders who play distinct roles in fostering the growth and sustainability of Start-ups. These stakeholders contribute to the governance and development of the ecosystem in different ways. Here are some key stakeholders and their roles in Start-up ecosystem governance:

1. **Founders and Entrepreneurs**: At the core of any Start-up are the founders and entrepreneurs who initiate and drive the venture. Their role in governance is significant as they set the vision, values, and culture of the Start-up. Founders are responsible for defining the company's mission and goals and establishing the framework for ethical and responsible business practices.

2. **Investors**: Investors, including venture capitalists, angel investors, private equity investors and crowd-funding platforms are a critical part of the Start-up ecosystem, providing the necessary capital for growth and development. Their role in governance involves ensuring the Start-up adheres to financial and operational guidelines. Investors often sit on the board of directors, where they play a key role in strategic decision-making and monitor the Start-up's financial health.

3. **Incubators and Accelerators**: Incubators and accelerators are organizations designed to support early-stage Start-ups. They provide resources, mentorship, and access to networks. Their role in governance is to help Start-ups establish solid foundations, fostering responsible and sustainable growth from the outset.

4. **Mentors and Advisors**: Mentors and advisors are experienced professionals who offer guidance and support to Start-ups. They contribute to governance by providing valuable insights, industry knowledge, and networking opportunities. Their role is to help Start-ups make informed decisions and avoid common pitfalls.

5. **Employees**: Employees are the backbone of any Start-up. Their roles in governance include upholding the company's values, ethics, and standards in their day-to-day work. They often participate in decision-making processes, ensuring that the Start-up maintains a healthy and responsible work environment.

6. **Service Providers**: Service providers, such as law firms, consulting firms, accounting firms, and marketing agencies, offer their services to Start-ups. They help with legal and financial compliance, branding, and marketing strategies.

7. **Government and Regulatory Bodies**: Governments and regulatory bodies create policies, regulations, and incentives that affect Start-ups. They play a vital role in governing Start-ups by establishing legal frameworks, protecting consumers, and ensuring fair competition. They create policies that Start-ups must adhere to and provide assistance in navigating legal and regulatory challenges.

8. **Educational Institutions**: Universities and research institutions contribute to the Start-up ecosystem by providing research, talent, and education. They may offer entrepreneurship programs, facilitate technology transfer, and conduct research that benefits Start-ups.

9. **Non-Governmental Organizations (NGOs)**: Certain Start-ups, particularly those in the social or environmental sectors, collaborate with NGOs that focus on specific issues. These organizations can provide guidance on responsible practices and help Start-ups integrate social or environmental responsibility into their business models.

10. **Customers and Users**: Customers and users are key stakeholders in the governance of Start-ups, as their feedback and preferences influence product development and market strategies. Start-ups must engage with their customers and address their concerns responsibly to maintain trust and loyalty.

By recognizing the roles and responsibilities of each stakeholder, Start-ups can navigate the complex terrain of the Start-up ecosystem while adhering to high standards of governance. The collaboration between these stakeholders ensures that Start-ups are not only successful but also responsible and ethical contributors to the broader business community and society as a whole. In a world that urgently needs sustainable solutions, Start-ups can be the catalysts of change, leading us toward a greener, more promising future.

F. Tax Risk Management

Tax risk management is an integral part of good corporate governance.[6] Such tax risk management can be achieved through a robust internal tax control mechanism, which includes (i) having a competent internal tax team which oversees the tax risks and compliances, (ii) having a formal framework for assessing the tax risks and compliances, (iii) continuous review and analysis of the tax risks of the company, (iv) robust provisioning of due and contingent liabilities in accordance with applicable accounting standards etc.

Adopting a tax risk management framework is likely to provide various benefits including greater certainty in meeting tax compliance obligations, reduced risk of scrutiny and litigation, stakeholder confidence etc.[7] The need for having a tax risk management system is being recognized globally, bearing testimony to which is the fact that several countries have issues guidelines for robust and effective tax control mechanisms.[8]

Lastly, the importance of tax risk management is felt now more than ever in light of the evolving nature of businesses having cross-border elements. Start-ups having a multinational presence (even in terms of operations) face greater tax challenges owing to competent tax claims by all the jurisdictions involved. Hence, having internal tax control mechanisms which spread across all jurisidictions in which the Start-ups have presence / operations has become the need of the hour.

6 Australian Tax Office (ATO) Tax risk management and governance review guide: https://www.ato.gov.au/Business/Large-business/In-detail/Key-products-and-resources/Tax-risk-management-and-governance-review-guide.

7 https://www.ey.com/en_my/tax/how-tax-governance-can-help-businesses-manage-risks-today-and-beyond.

8 Malaysian Inland Revenue Board's (IRB) Guidelines to Tax Corporate Governance Framework; Inland Revenue Authority of Singapore's (IRAS) Tax Governance Framework (TGF) and Tax Risk Management and Control Framework for Corporate Income Tax (CTRM); Australian Tax Office (ATO) Tax Risk Management and Governance Review Guide; Organisation for Economic Co-operation and Development (OECD)'s Report on Co-operative Tax Compliance: Building Better Tax Control Frameworks 2016.

Boardroom Basics: Early-Stage Start-up Governance and Founder Duties

In the dynamic world of Start-ups, the early stages of a company's journey are often marked by enthusiasm, innovation, and a relentless pursuit of success. Founders and their teams are fuelled by passion and a vision for the future, driving them to take bold steps into uncharted territory. Yet, amidst the whirlwind of opportunities and challenges, one aspect often overlooked is governance — the framework that defines how a Start-up is directed, controlled, and held accountable.

The early-stage of a Start-up is an important time. It is a period of rapid learning, testing, and adapting. Understanding the principles of governance and the essential duties of founders within this context is not only a wise move but a fundamental one. So, let's embark on a journey through the boardrooms of early-stage Start-ups, exploring the intricacies of governance and the indispensable role founders play in steering their ventures toward success.

A. Roles and Responsibilities of Founders

Visionary Leadership

The founder is the driving force behind the Start-up's vision. It is their responsibility to define the company's *mission* and *purpose*, set its long-term goals, and establish a clear direction. This vision not only inspires the team but also attracts investors, partners, and customers who believe in the founder's ability to create something meaningful.

Defining a clear *'purpose'* is critical for Start-ups to identify the unique problem they are solving and the strengths that set them apart from competitors. The purpose sums up the essential need that the Start-up aims to address and the distinct value it provides to its customers. Purpose goes beyond branding and public relations, and its importance lies in inspiring employees, guiding the company's efforts, and helping it make crucial decisions in challenging situations.

Emphasize Culture

Corporate culture has gained immense significance in today's business landscape. A healthy culture not only attracts and retains skilled employees but also minimizes the risks associated with a negative culture. A culture that fosters lifelong learning and external orientation can be a powerful asset. Founders need to ensure that management *walks-the-talk* on culture and values. Cultures can also change more rapidly than Founders think. They sometimes underestimate the influence the Founders has on the culture. The Founders' behaviour is quickly copied throughout the organization.

Founders should foster a culture of open communication that encourages employees to speak up when they see something that doesn't align with the company's values or policies. By creating a safe space for dialogue, the organization can identify and address potential issues before they become major problems.

Team Building

A founder is responsible for assembling and leading a capable and motivated team. They should hire individuals who complement their skills and share their vision. Building a cohesive team is essential for executing the business plan and navigating the inevitable challenges that come with Start-up life.

Creating a business is difficult, and no one can do it alone. The founders must invite trusted individuals to join the team. A good team is one that can fill each other's roles to develop the company.

Product Development

In the early stages, founders often wear many hats, and product development is a key responsibility. They must guide the development of the product or service, ensuring it meets market needs, is scalable, and maintains a high level of quality. This requires both a technical understanding and the ability to make strategic decisions about product features and iterations. Founders need to closely oversee the product roadmap to ensure it aligns with the Start-up's vision.

Marketing and Sales

Founders play a central role in defining the Start-up's marketing strategy and brand identity. They should have a deep understanding of their target audience and how to reach them effectively. Additionally, they often lead initial sales efforts, forging partnerships, and building the customer base. Further, the founders must design and develop a comprehensive business plan for the company. A solid business plan is essential for guiding the company's efforts and helping employees understand how to achieve its objectives.

Additionally, founders should possess a deep understanding of the market they are entering. This includes knowledge of competition, pricing, profitability, regulatory requirements, and market trends. By staying informed and adaptable, founders can position their Start-up for success.

Financial Management

Managing the company's finances is a fundamental responsibility. This includes budgeting, financial forecasting, and maintaining accurate records. It's crucial to ensure that the Start-up remains financially viable and that resources are allocated wisely. Further, founders must diligently oversee their expenses to guarantee the financial stability and endurance of their company. During the initial phases of a business, revenue often remains limited while costs tend to escalate.

To avert the risk of depleting funds, it is imperative to minimize overhead expenses and optimize revenue generation. This approach not only supplies the necessary capital for prospective expansion but also establishes a robust financial foundation, enabling the company to progress and evolve. Furthermore, maximizing profitability enhances the Start-up's attractiveness to potential investors, facilitating the acquisition of additional funding.

Secure Funding

Funding is one of the most critical responsibilities for founders. Without adequate funding, most Start-ups cannot grow past the early stages. Founders must seek out and engage with investors, whether they are angel investors, venture capitalists, or through crowdfunding platforms. It's the founder's responsibility to present the Start-up's value proposition and convince investors to provide the necessary capital.

Governance and Compliance

Founders are expected to ensure that the Start-up complies with all relevant legal and regulatory requirements. Thus, they need to navigate issues related to industry specific laws, tax, intellectual property, contracts, regulatory compliance and more. Seeking legal counsel when necessary is important to protect the Start-up from potential legal challenges. Founders must also take the lead in developing and implementing ethical and compliance policies to guide the behaviour of employees and stakeholders.

Networking and Relationship Building

Building a network of industry contacts, mentors, and advisors can be instrumental in a Start-up's success. Founders should actively seek opportunities to connect with experienced entrepreneurs and experts who can offer guidance and support. Further, interaction with potential investors, customers, suppliers, partners, and industry leaders is vital for building the Start-up's image, gaining recognition, and exploring uncharted opportunities. Networking can open doors to partnerships and investments.

Focus on Key Performance Indicators (KPIs)

Identifying the right KPIs and regularly monitoring them is crucial for a founder. Key metrics drive a company's performance, and founders must continuously work to improve these indicators to ensure the Start-up's success. In the dynamic and competitive world of Start-ups, effective use of KPIs is integral to achieving success. Founders play an important role in not only defining and monitoring these KPIs but also in fostering a data-driven culture and using KPIs as a compass to navigate the challenges and opportunities that come their way.

Manage the Board of Directors

An experienced venture capital or private equity investor can bring significant benefit to the board of a Start-up. It is common practice for an investor to appoint a nominee director on the board of the company they are investing in, along with a set of negotiated control and voting rights. Managing a board of directors, especially when it includes investor directors, is both a delicate and essential aspect of Start-up leadership. Successful founders understand that they play a central role in aligning the interests of the board with the company's strategic goals. By effectively fulfilling these roles and responsibilities, founders can cultivate a strong and supportive board, which, in turn, can greatly contribute to the success and growth of their Start-up.

By understanding and embracing these roles and responsibilities, founders can position their Start-ups for sustainable growth and success.

B. Collective Duties of the Board of Directors

In the context of good governance, the boardroom stands as the epicenter of decision-making for an organization. The company's board of directors, commonly referred to as "the Board", is typically constituted by a diverse assembly of individuals with varying backgrounds and expertise. Collectively, they guide the company, making important decisions that hold the power to mold the company's destiny.

Furthermore, board decisions often encompass critical matters such as corporate strategy, investments, mergers, and financial oversight, all of which have far-reaching consequences. By leveraging the collective wisdom of the board, a company can benefit from a more comprehensive evaluation of potential risks and rewards. It also fosters transparency and accountability, instilling confidence in stakeholders, including investors, employees, and customers, that decisions are made with the organization's best interests in mind.

The decisions made by the board can be broadly classified into four key areas. To begin with, there are decisions in the realm of Human Resources, which encompass pivotal matters like the selection of board members and key managerial personnel, the structuring of compensation packages, and the development of succession plans. Secondly, financial considerations hold a prominent position on the board's agenda, covering aspects such as capital budgeting, financial reporting and disclosure requirements, the formulation of capital structure, and the establishment of various financial policies.

Thirdly, boards frequently engage in discussions pertaining to strategic considerations, which involve decisions regarding business strategies, potential mergers and acquisitions, and the definition of the organization's mission, vision, and overall purpose. Lastly, governance-related decisions are of paramount importance, focusing on areas such as the organizational structure, ESG initiatives, adherence to corporate governance best practices, compliance with statutory and regulatory mandates, and the establishment of decision-making protocols.

The duties of a director have been prescribed under section 166 of the Companies Act, 2013 (“**the Act**”). Some are:

- Act in accordance with the articles of association of the company;
- Act in good faith in order to promote the objects of the company for the benefit of its members as a whole and in the best interests of the company, its employees, the shareholders, the community and for the protection of the environment;
- Exercise due and reasonable care, skill and diligence, and exercise independent judgment;
- Avoid any conflict of interest;
- Not to take unfair advantage of his office in order to obtain any undue advantage or gain;
- Not to assign his office and any such assignment shall be void;

In addition to the above, few of the additional duties imposed under other provisions of the Act are as under:

- To attend board meetings and provide their inputs for the growth of the business operations;
- To disclose concern or interest in any other companies, firms etc. in form MBP 1;
- To monitor the effectiveness of the company’s governance practices and make changes, if required;
- To manage potential conflicts of interest between founders and investors including related party transactions;
- To ensure integrity of the company’s accounting and financial reporting systems;

While the duties of the board are vital, they come with their share of challenges. One common challenge is balancing the interests of various stakeholders, including shareholders, employees, and the broader community. This delicate equilibrium can be intricate to maintain, especially when competing interests emerge. Additionally, the board must contend with the rapidly changing business landscape. Technological advancements, global economic fluctuations, and evolving regulatory frameworks demand the board’s adaptability and constant vigilance.

Another challenge lies in ensuring that board members possess the diverse expertise required to provide effective oversight. Recruiting directors with a broad range of skills and backgrounds can be a daunting task. Furthermore, board members must navigate the complexities of conflicts of interest and remain committed to making impartial decisions in the company’s best interest.

Moreover, the board must maintain cohesion and unity while making difficult choices. Internal disputes and disagreements among board members can hinder effective decision-making. Finally, boards must grapple with an increased demand for transparency and accountability from investors and regulatory bodies. This necessitates greater diligence in record-keeping, disclosure practices, and adherence to ethical and governance standards.

Every board will encounter decision-making challenges. However, with some proactive measures, the board can make optimal decisions for the cooperative without causing any issues. A unified board, functioning as a team, can effectively manage tough decisions and conflicts. By incorporating effective team-building practices into every board meeting, the board of directors can collaborate seamlessly and foster a prosperous company.

C. Best Practices for Structuring the Board and Committees

The composition and structure of a board of directors and its committees, to the extent applicable, are crucial to the governance and success of any organization, whether it's a Start-up, a well-established corporation, or a non-profit. Structuring the board and committees effectively is essential to ensure the organization operates efficiently, adheres to best practices, and makes sound decisions. Let us explore some of the best practices for creating an effective board and committees.

1. **Diverse Expertise**: A board should have people with the right skills and knowledge to help lead the organization. Seek out individuals with a wide range of expertise, including finance, technology, marketing, and industry-specific experience. This diversity ensures that the board can provide well-informed guidance on various aspects of the organization.

2. **Define Clear Roles and Responsibilities**: One of the fundamental principles of effective board and committee structure is to define clear roles and responsibilities for each entity. This includes outlining the specific duties, decision-making authority, and reporting lines for the board and its various committees. A well-defined structure helps prevent overlap and confusion, ensuring that each group operates efficiently.

3. **Independence**: Independence is a cornerstone of effective governance. It's essential to have a balanced mix of executive and non-executive directors on the board. Independent directors or nominee directors can offer impartial advice and serve as valuable checks and balances.

4. **Board Size**: The size of the board matters. In the early stages of an organization, a smaller board can make decisions swiftly and with agility. As the organization grows and becomes more complex, consider expanding the board to accommodate increased responsibilities and diversity.

5. **Committee Structure**: Organize committees with specific roles and responsibilities. Key committees often include an Audit Committee, Nomination and Remuneration Committee, Stakeholder Relationship Committee, Risk Management Committee and Investment Committee. Each of these committees serves a distinct purpose and provides focused oversight.

6. **Effective Communication**: Establish regular communication channels between the board, committees, and the organization's management team. Ensure that all stakeholders are informed and involved in decision-making processes. Transparency and open lines of communication are essential for effective governance.

7. **Board Training**: Invest in board orientation and training programs. New board members, in particular, should receive comprehensive training to understand their roles and responsibilities. Training helps ensure that all members are well-prepared to contribute effectively.

8. **Regular Review**: Periodically review the structure of the board and its committees to ensure they align with the organization's evolving needs and goals. Flexibility and adaptability are key, as the organization and its industry may change over time.

A well-structured board ensures that the organization has access to diverse expertise, maintains independence, and operates with transparency and accountability. By following these best practices, organizations can build strong governance structures that guide them toward sustainable growth and success.

D. Board Meetings and Governance Protocols

Conducting board meetings is a fundamental aspect of corporate governance which is crucial for each founder and investor director in a Start-up. The principles guiding these meetings are firmly established in legal frameworks, such as the Companies Act, 2013 ('the Act'), and complemented by Secretarial Standards 1 (SS-1), which are issued by the Institute of Company Secretaries of India (ICSI) and endorsed by the Central Government of India. These standards aim to offer additional clarity in situations where ambiguity arises and to set benchmark standards that harmonize the diverse practices commonly employed.

When a board meeting is on the horizon, the responsibility of notifying and inviting directors falls upon the company secretary or an authorized director. This notice is issued within the timeframe specified in the Act and charter documents, ensuring compliance with legal requirements. The notice typically contains critical details, including the meeting's date, time, location, and provisions for directors to join electronically. Alongside, an agenda is shared, comprehensively outlining the topics to be discussed and supplementing materials to facilitate informed discussions. In some cases, key employees, officers, advisers, or external professionals may also be invited to participate, enriching the deliberative process.

Meeting Proceedings

As the meeting convenes, the chairman of the board confirms the presence of the quorum, a minimum number of directors required to validate the meeting. The agenda items are then addressed in the order stipulated, and each director in attendance has the opportunity to express their perspectives, insights, and arguments relevant to each item. Decisions are typically formalized through resolutions. Various types of resolutions may be adopted, ranging from those determined by a simple majority to those requiring affirmative votes from specific directors or unanimous consent.

Recording the Minutes

The outcome of these resolutions, as determined by the voting process, is meticulously recorded in the meeting minutes. The minutes capture the essence of the discussions, deliberations, decisions, and the rationale behind each resolution adopted by the board. Additionally, they meticulously document the voting results for every item on the agenda. This detailed record of proceedings also considers any disclosures of conflicts of interest made by directors. In cases where a director dissents on an agenda item, the minutes accurately reflect this dissent along with the underlying reasons. The chairman of the meeting holds the authority to exclude any content from the minutes that they believe to be defamatory, irrelevant, immaterial to the proceedings, or detrimental to the company's interests.

Transparency and Accountability

At the heart of the decision-making process in board meetings is a commitment to transparency and accountability. Board members are entrusted with the responsibility of acting in the best interests of the company's shareholders. To ensure this commitment to transparency, many companies go the extra mile by disclosing major decisions and board resolutions to shareholders and the public through regulatory filings and reports. In essence, formalizing board meetings is not only a legal requirement but also an indispensable practice in ensuring that corporate governance remains robust, transparent, and accountable. By adhering to established procedures and standards, companies can navigate the complexities of governance with grace and efficiency

E. Balancing Growth and Responsibility

Start-ups have founders and investors serving as board members. These individuals may have a vested interest in the Start-up's success, with their primary responsibility being to protect their investments and ensure the company's value and growth potential remain high. While this focus on valuation is vital, it can sometimes lead to shortcuts and questionable practices driven by a mix of promoters' ambitions and investors' appetite for higher valuations.

Start-ups often grapple with prioritizing growth and profitability over governance concerns due to various factors, including investor pressure, limited resources, short-term thinking, cultural values, and compliance challenges. They are frequently driven by the need to achieve profitability quickly. This urgency can result in decisions that prioritize short-term gains over long-term sustainability and governance. The desire for rapid growth and capital often compels founders to take shortcuts and, on occasion, engage in unethical practices. Unfortunately, this approach can lead to governance failures and, in extreme cases, the collapse of the Start-ups and its promoters. In such instances, promoters and key management personnel may resort to non-transparency and even falsify financial records to generate quick profits.

While the quest for a high valuation is critical for Start-ups, it should not come at the expense of good governance practices and ethical conduct. Founders and investors play a crucial role in ensuring responsible governance practices and holding management accountable for their actions. This oversight is essential to secure the company's long-term success and safeguard investments. Nevertheless, this pressure to perform can sometimes push Start-ups toward prioritizing rapid growth at the cost of governance considerations.

While Start-ups have a distinct culture that thrives on risk-taking, innovation, and disruption, which are all instrumental in driving growth, these values may not always align with governance considerations. Thus, it is imperative for founders to acknowledge and address these challenges and make a concerted effort to prioritize responsible governance practices, thereby ensuring the Start-ups long-term sustainability and success. Balancing the need for rapid growth with ethical conduct is the key to navigating the dynamic world of Start-ups.

Navigating Shareholder Relations and Effective Governance

There is an increasingly evident recognition of the crucial role investors can play in steering transformative changes within the companies they choose to invest in. With the mounting importance of ESG metrics in the investment landscape, investors are no longer focusing solely on assessing risks but are also actively seeking to gauge the tangible real-world impacts, whether positive or negative, that corporate operations and future investment opportunities can have. This shift in perspective reflects a broader agenda surrounding the transition to a low-carbon economy, the pursuit of social equity, and various other objectives aligned with the UN Sustainable Development Goals (SDGs).

Effective engagement between Start-ups and investors, as well as other stakeholders, emerges as a foundation in nurturing enduring relationships. Such engagement involves an intricate exchange of information wherein investors accurately scrutinize a company's communications regarding its strategic outlook, governance practices, and long-term goals. Simultaneously, they communicate their own expectations and engagement policies. This dynamic interaction not only fosters a deeper understanding of a company's governance structure and long-term strategy, surpassing traditional financial metrics, but also serves to evaluate whether the company boasts a thoughtful board, adheres to sound governance principles, and has a reasonable long-term strategy in place.

Investors who are content with a company's approach to governance and its long-term vision are more likely to stand by the corporation when faced with short-term pressures. The overarching aim of this engagement process is to surpass mere check-the-box governance mandates and quarterly financial metrics, leading towards a more comprehensive understanding of a corporation's long-term prospects.

A. Role of Venture Capital Investors in Good Governance

The world of venture capital is a dynamic ecosystem, with investors providing not only financial resources but also strategic guidance to Start-ups and early-stage companies. The involvement of venture capital investors has a profound impact on corporate governance. Let's explore the various dimensions of this impact and understand why companies backed by venture capital investors often have superior governance structures.

Active Participation in Start-up's Development

One of the defining features of venture capital investors is their active involvement in the companies they invest in. Unlike traditional shareholders, venture capitalists don't merely sit on the sidelines and wait for profits; they actively engage with the management team and board. This hands-on approach allows them to provide valuable insights, mentorship, and guidance.

Venture capitalists work closely with the management team to develop and execute business strategies, set milestones, and monitor progress. This active participation ensures that the company's governance is aligned with its strategic objectives, driving better decision-making processes.

Preference for Independent Directors with Industry Experience

Venture capital investors are keen on assembling a board of directors that is not only diverse but also highly experienced in the industry of the Start-up. This preference for independent directors with relevant industry expertise contributes to better corporate governance. Independent directors bring an unbiased perspective to the board, ensuring that decisions are made in the best interest of the company and its stakeholders.

Moreover, their industry experience equips them with the knowledge required to make informed decisions and oversee the company's strategic direction effectively. This preference for industry-savvy directors boosts the company's governance structure and helps in avoiding conflicts of interest.

Promotion of Networking and Strategic Alliances

Venture capital investors recognize the importance of strategic alliances and networking in the growth of a Start-up. They actively encourage their portfolio companies to establish connections with industry peers, potential partners, and mentors. This not only facilitates knowledge sharing but also opens doors to potential capital-raising opportunities.

By connecting their investee companies with a broad network of experts and influencers, venture capital investors enhance corporate governance. These connections often result in mentorship, access to new markets, and increased resources, all of which contribute to better decision-making and governance practices.

Enhanced Governance Structures

It is no surprise that companies backed by venture capital investors tend to have superior governance structures. The combination of active involvement, experienced independent directors, and networking opportunities creates an environment where transparency, accountability, and ethical behaviour thrive. This enhances the overall governance of the company, fostering investor and stakeholder trust.

B. Shareholders' Rights under Companies Act 2013

Under the Companies Act, 2013, shareholders of a Start-up in India, like any other company, are granted several rights to protect their interests and ensure transparency and accountability within the corporate framework. These rights play a vital role in safeguarding the investments and ensuring fair treatment for shareholders.

One of the fundamental rights accorded to shareholders is the right to receive financial information and participate in decision-making. Shareholders have the right to access financial statements, annual reports, and other essential documents that provide insights into the company's performance and financial health. This access empowers shareholders to make informed decisions about their investments and enables them to hold the management accountable for their actions.

Additionally, shareholders have the right to participate in annual general meetings (AGMs) and extra ordinary general meetings (EGMs). AGMs serve as a platform for shareholders to voice their concerns, ask questions, and vote on important matters such as the appointment of directors, dividend declarations, and changes in the company's capital structure. This participatory role ensures that shareholders have a say in the governance and direction of the company, promoting transparency and good corporate governance practices.

Furthermore, the Companies Act, 2013, also grants minority shareholders certain protective rights, such as the right to seek relief from oppression and mismanagement, ensuring that their interests are not overlooked in favour of the majority shareholders. These rights collectively contribute to a robust legal framework that safeguards the interests of shareholders in Indian companies and promotes corporate accountability and fairness.

It is important to note that the specific rights of shareholders in a Start-up can vary depending on the company's constitution, shareholders' agreement, and any other contracts or arrangements in place. Additionally, Start-ups may have different classes of shares with varying rights, which can be defined in the company's articles of association.

Start-ups often adapt their governance and shareholder rights to align with their unique business models and the expectations of their investors. It is crucial for shareholders to thoroughly review and understand the company's governing documents and any associated agreements to be fully aware of their rights and responsibilities as investors in the Start-up.

C. Understanding the Impact of Governance on Funding

In the landscape of economic growth, Start-ups stand as catalysts, and their prosperity lies on securing the right financial support. Funding from investors such as VCs, PE, angel investors etc has risen to prominence as an essential funding stream for Start-ups, delivering not only the necessary financial capital but also valuable strategic counsel. In the pursuit of these investments, Start-ups must recognize the paramount importance of governance and accord it top priority.

Corporate governance principles serve as the cornerstone for companies to institute robust, ethical, and legally compliant frameworks. These frameworks, in turn, foster long-term sustainability and bolster the Start-ups' capacity to allure investment capital. By enhancing accountability and fortifying risk management, good governance diminishes investment risks, rendering Start-ups more enticing to VCs, PE, angel investors etc.

Capital plays a key role in kickstarting a business for Start-ups. The absence of enough funding can hinder their ability to introduce products and services, expand their customer base, and secure a lasting position in the market. Fortunately, there exists a range of methods to secure capital for Start-ups. Access to capital is an invaluable asset for Start-ups, often serving as the decisive factor that separates triumph from setback. With a ready supply of capital, Start-ups can finance their day-to-day operations, expand their enterprises, and capitalize on opportunities that might otherwise remain beyond their grasp.

Fluctuations in interest rates, liquidity, and the global economic landscape have given rise to evolving investor expectations. In the present landscape, the spotlight has shifted towards profitability and cash flows, as opposed to the pursuit of growth at any cost. Start-ups equipped with a well-structured governance framework are better positioned to meet these expectations and successfully secure the essential funding they require.[1]

Challenges for Start-ups without Access to Capital

One of the foremost hurdles emerging from a lack of access to capital is the constraint on available resources. Start-ups often find themselves in a financial shortfall, impeding their ability to hire additional staff or procure essential equipment and materials. Consequently, these limitations can force a company to rely on its existing resources, which may prove insufficient or even counterproductive for their growth. Moreover, while a Start-up may boast a compelling product or service, the scarcity of funds can impede their capacity to effectively market it, resulting in a smaller customer base and reduced sales volume.

Another substantial challenge faced by Start-ups in the absence of access to capital is restricted growth. With inadequate resources, Start-ups find themselves unable to expand their operations or seize new opportunities. This stunted growth can lead to stagnation and hinder overall progress, which can have detrimental long-term consequences for the business. Without access to capital, Start-ups may be precluded from entering new markets or harnessing innovative technologies and advancements that could otherwise enhance their operations.

Lastly, Start-ups devoid of access to capital may encounter obstacles in undertaking larger projects or investing in research and development endeavours. This limitation can curtail a company's potential for success as they may lack the resources required to develop novel products or services that could attract new customers and revenue streams. In the absence of capital access, Start-ups may grapple with keeping pace with industry trends or find themselves ill-equipped to compete with larger, more established entities.[2]

D. Balancing the Interests of Investors and Other Stakeholders

One of the most pressing challenges faced by companies is striking the delicate balance between the interests of investors and the needs of other stakeholders. This group encompasses a diverse range of individuals and entities, including employees, customers, suppliers, local communities, and regulatory bodies. This equilibrium is vital for the long-term sustainability and success of an organization.

While investors typically focus on maximizing their returns, other stakeholders, such as employees, customers, suppliers, and the broader community, have a more diversified set of concerns that extend beyond financial gains. Their interests include aspects like job security, product quality, sustainability, and adherence to ethical and environmental standards. Achieving this equilibrium is not only ethically responsible but also fundamental to maintaining a healthy and productive corporate ecosystem.

1 https://inc42.com/resources/how-good-governance-in-funds-Start-ups-can-strengthen-indias-private-equity.

2 https://fastercapital.com/content/Why-Access-to-Capital-is-So-Important-for-Start-ups.html.

The challenge arises from the inherent tension between these two groups. Investors often expect the company to prioritize profit maximization, which can lead to decisions that may not always align with the broader interests of other stakeholders. Conversely, if a company solely caters to the needs of other stakeholders, it may neglect its fiduciary duty to investors. However, the governance perspective on this issue is clear: sustainable success and responsible corporate behaviour demand a harmonious coexistence.

An intelligently structured board of directors, comprising representatives from diverse stakeholder backgrounds, ensures that a comprehensive range of perspectives is considered, facilitating well-rounded decision-making. Further, companies should practice candid disclosure regarding their objectives, strategies, and challenges. This not only fosters trust but also enables stakeholders to comprehend the reasoning behind specific choices.

Corporate leaders must wholeheartedly endorse ethical conduct, ensuring that investor returns, and stakeholder well-being are accomplished through responsible and principled methods. Any inclination toward unethical shortcuts or decisions that prioritize short-term gains over long-term sustainability is detrimental to all parties involved. Lastly, incorporating social responsibility and sustainability into business models can further strengthen the alignment of investor and stakeholder interests.

Balancing the interests of investors and other stakeholders is not an easy task. It is an art that requires thoughtful governance, open communication, and a commitment to ethical business practices. Striking this balance is a key driver of long-term success and resilience for any organization. By recognizing the interdependence of these interests and making them complementary rather than conflicting, companies can build a foundation for a thriving, sustainable, and responsible business that benefits all. In the end, it's not just about achieving financial prosperity for one group; it's about creating a prosperous and equitable future for all.

A Guide to Safeguarding your Start-up's Intellectual Property

For businesses, specially Start-ups, protecting the intellectual property ("**IP**") is of paramount importance in order to preserve the ideas and innovations, encourage competitiveness, and in turn draw investors. Maintaining IP contributes to a business's market expansion, funding, maintaining a competitive advantage, and revenue creation through licensing. Additionally, IP protection contributes highly towards strengthening brand reputation and maintaining sustainability over the long run.

Hence, IP should be an essential element of a business's success strategy right from the outset.

A. What Are the Different Forms of Intellectual Property?

IP in a business can take several forms, for instance, a tech company may patent a new and inventive software algorithm that they have developed which is capable of industrial use, giving them exclusive rights to use and license it for a certain period; and a business with a distinct name and/or logo may get trademark registration for the same to protect their brand identity, preventing others from using a similar name or logo in ways that could confuse customers. Below is a list of the kinds of IP that a business must focus on in order to strengthen their brand value and safeguard their intellectual assets.

Trademarks

In India, trademarks are protected both under statutory law and common law. The Trade Marks Act, 1999 ("**TM Act**") along with the Trademark Rules, 2017 ("**TM Rules**") is the primary legislation for trademarks in India. Notably, the TM Act in compliance with the obligations under Agreement on Trade Related Intellectual Property Rights ("**TRIPS**"). India follows the NICE Classification of goods and services, which is incorporated in the Schedule to the TM Rules.

Under the TM Act, the term 'mark' is defined to include 'a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or, combination of colors, or any combination thereof.' Thus, the list of instances of marks is inclusive and not exhaustive. Any mark capable of being 'graphically represented'[1] and indicative of a trade connection with the proprietor is entitled to get registered as a trade-mark under the TM Act. This interpretation opens the scope of trademark protection to unconventional trademarks like sound marks provided they satisfy the 'graphical representation' test and are not prohibited under Section 9 and 11 of the Act.

A trademark when registered, can be used by the proprietor or registered user for ten years and such registration renewable for a subsequent period of ten years. Nonrenewal leads to a lapse of registration. However, there is a procedure whereby a lapsed registration can be restored. Additionally, the registered proprietor, their heirs and the registered user(s) can sue for infringement of a trademark.

1 TM Rules define "graphical representation" as representation of a trademark for goods or services in paper form.2 Therefore, sound marks can be represented on paper either in descriptive form e.g., kukelekuuuuu (registered as Dutch sound mark - onomatopoeia which sounds like the call of a cock) or as traditional musical notations e.g., D#, E etc.

Copyrights

The Copyright Act, 1957 ("**Copyright Act**"), supported by the Copyright Rules, 1958 ("**Copyright Rules**"), is the governing law for copyright protection in India. The Copyright Act provides that a copyright subsists in an original literary, dramatic, musical or artistic work, cinematograph films, and sound recordings. However, no copyright subsists in a cinematograph film if a substantial part of the film is an infringement of the copyright in any other work or in a sound recording, if in making the sound recording of a literary, dramatic or musical work, copyright in such work is infringed.

A copyright grants protection to the creator and his representatives for the works and prevents such works from being copied or reproduced without his/ their consent. The creator of a work can prohibit or authorize anyone to: reproduce the work in any form, such as print, sound ,video, etc.; use the work for a public performance, such as a play or a musical work; make copies/recordings of the work, such as via compact discs, cassettes, etc.; broadcast it in various forms; or translate the same to other languages.

Under Indian law, registration is not a prerequisite for acquiring a copyright in a work. A copyright in a work is created when the work is created and given a material form, provided it is original. The Copyright Act provides for a copyright registration procedure. The term of copyright is, in most cases, the lifetime of the author plus 60 years thereafter.

Patents

In India, the law governing patents is the Patents Act, 1970 ("**Patents Act**"). "Inventions," which are patentable within the definition of the Patents Act are defined as "a new product or process involving an inventive step and capable of industrial application." Thus, the traditional aspects of novelty, non-obviousness, and utility have been specifically included in the definition of the term "invention". If such invention was known or used by any other person, or used or sold by the applicant to any person in India and/or outside India, then the applicant would not be entitled to the grant of a patent. Although patent rights are essentially territorial in nature, the criteria of novelty and non-obviousness are to be considered on/compared with prior arts on a worldwide basis. Any earlier patent, earlier publication, document published in any country, earlier product disclosing the same invention, or earlier disclosure or use by the inventor will prevent the granting of a patent in India.

India grants patent right on a first-to-apply basis. The application can be made by either (i) the inventor or (ii) the assignee[2] or legal representative[3] of the inventor. Additionally, foreign applicants are given national treatment too.

Every patent granted under the Patents Act is protected for term of 20 years from the date of filling the patent application in India, for all categories of patents in compliance with Article 33 of TRIPS. There is no provision for an extension of the patent term. Further, the term of patent in case of applications filed under the PCT designating India is twenty years from the international filling date.

2 Assignee includes an assignee of the assignee and the legal representative of the deceased assignee and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person.

3 Legal representative means a person who in law represents the estate of a deceased person.

Designs

Industrial designs in India are protected under the Designs Act, 2000 ("**Designs Act**") and the Designs Rules, 2001 ("**Designs Rules**"). The Designs Act incorporates the minimum standards for the protection of industrial designs, in accordance with the TRIPS agreement. As per the Designs Act, "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any "article" whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye. However, "design" does not include any mode or principle of construction, or anything which is in substance a mere mechanical device, and does not include any trademark.

Any person claiming to be the "proprietor of any new or original design" not previously published in any country and is not contrary to public order or morality can apply for the registration of the design. The expressions "public order" or "morality" have not been defined in the Designs Act. The term "original," with respect to design, means a design originating from the author of such a design and includes the cases that, although old in themselves, are new in their application. Absolute novelty is now the criterion for registration.

Registration of a design confers upon the registered proprietor a "copyright" with respect to the design. Under the Designs Act, the word "copyright" refers to the exclusive right to apply the design to any article in any class in which the design has been registered. The first term of registration is ten years after which it can be renewed for an additional five-year period.

Trade Secrets, Know How and Confidential Information

Confidential information and trade secrets are protected under the common law and there are no statutes that specifically govern the protection of the same. In order to protect trade secrets and confidential information, watertight agreements should be agreed upon, and they should be supported by sound policies and procedures. An enterprise generating IP has a substantial amount of information in the nature of confidential information and trade secrets. Any inadvertent disclosure of IP could jeopardize the IP owner's claim to originality and other related rights.

One needs to identify whether certain IP including trade secrets have fallen in the public domain. For instance, if an entity develops a novel product or process, but discloses it to public, it may lose the opportunity to patent or to protect it as a trade secret. This may become a deal breaker from a commercial perspective if the value of the company was based on the novel product or process itself. Further, at times, in technology transfer agreements know how or trade secrets shared are not clearly identified, hence, fact finding exercise is required to ensure that none of them fall within public domain.

From a practical perspective, we have seen that transfer of trade secrets usually happen at the top executive level, where the trade secret in recorded in a document / or a medium and passed in sealed envelope to maintain confidentiality. There are strict confidentiality agreements to protect against disclosure.

Other Kinds of IP

i) **Geographical Indications**: Geographical Indications ("**GI**") are the kind of IP which identify a good as originating in a place where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. The Geographical Indications of Goods (Registration and Protection) Act, 1999 provides for the registration of a GI and the 'authorized user' thereof. Any person claiming to be the producer of goods in respect of a registered GI can apply for registering him as an authorized user. GI registration is valid for a period of ten years, and may be renewed thereafter from time to time.

ii) **Layout Design and Semiconductor Integrated Circuit**: Layout design refers to a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuit, and Semiconductor Integrated Circuit means a product having transistors and other circuitry elements, which are inseparably formed on semiconductor material or insulating material, or inside the semiconductor material, and designed to perform an electronic circuitry function. The Semiconductor Integrated Circuits Layout Design Act, 2000 governs the protection of this kind of IP, and the term of registration is for a period of ten years from the date of filing an application for registration or from the date of its first commercial exploitation anywhere in India or in any country, whichever is earlier.

iii) **Plants and Varieties**: The Protection of Plant and Varieties and Farmers Rights Act, 2001 governs several aspects of protection of plant varieties, including protection of varieties developed through public and private sector research; protection of varieties developed and conserved by farmers and traditional communities, providing them with legal rights to save, use, sow, resow, exchange, share, or sell their farm seed; encouraging plant breeders and researchers to develop new and improved varieties; etc. The total period of validity of registration shall not exceed: 18 years, in case of trees and vines; 15 years, in case of extant varieties; and 15 years, in any other case. The certificate of registration issued under this Act is valid for 9 years in case of trees and vines and 6 years in case of other crops and a registrant is required to renew the same for the remaining period of registration.

iv) **Biological Diversity**: Biological diversity means the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species of eco-systems. The Biological Diversity Act, 2002 states that all foreign individuals, associations and organizations would be required to seek the prior approval of the National Biodiversity Authority to access any biological resource or the results of research occurring in India, for any use and that all Indian citizens would have to seek the NBA's prior approval to transfer the results of research relating to any biological resource to foreigners. Additionally, the authority will have the power to impose conditions to ensure a share in the benefits accruing from the acquisition of IPR.

B. Why Do Businesses Need to Protect Their Intellectual Property?

IP protection safeguards the unique ideas, innovations, and creative works that set a business apart from competitors. This competitive advantage helps maintain market share and profitability. IP can be a significant source of revenue through licensing or selling patents, trademarks, and copyrights. It can also enhance an entity's valuation, which is crucial for attracting investors or potential buyers. Additionally, IP protection fosters innovation by providing creators with incentives to invest in research and development, in turn encouraging the businesses to continually improve their products and services.

IP protection also helps build and maintain a strong brand identity, at the same time promoting customer trust and loyalty. Furthermore, IP protection prevents unauthorized use or reproduction of a business's assets, reducing the risk of reputation damage or market dilution. Overall, safeguarding IP is essential for a business's growth, competitiveness, and long-term sustainability. Please see the checklist in Table – 1 below to check the nature of the IP owned by your business, and accordingly other nuances of the same.

C. What Are the Steps that a Business Needs to Take to Protect Their Intellectual Property?

In order to protect the IP, businesses need to undertake certain steps. Some of these steps include:

Identification of IP

A business could be creating, and in turn be owning certain IP of different kinds in its day to day operations. It is essential to identify such IP and subsequently take steps to protect the same. When the IP is registered or applied for, it is easy to conduct a further due diligence to ascertain ownership, validity, strength of IP and other related aspects. However, in case of unregistered IP, ascertaining all these aspects becomes an issue. For instance, in India, it is not common to register copyrighted work (which may exist in source codes, programmes, notes, algorithms, drawings etc.). In such a case, the IP in copyrighted work is generally identified based on the documentation available with the seller entity and /or on the basis of representations given by the seller entity.

Further, often the IP may be protected in some countries but not in the other. The fact that IP rights are territorial in nature may not be fully appreciated. For example, a buyer may perceive value from a patented product in the US in the Indian market. But if the patent protection is not available in India, this may be a non-starter for the deal. Even if this situation is to be examined from a licensing agreement perspective, then firstly it will not be proper to give a license to an IP in a jurisdiction where you don't even own it. Secondly, technically, no value could be assigned to licensing in jurisdictions where IP is in the public domain, because it is open to use by all.

Registration

Registration of IP is not mandatory for copyrights, but registering the same give the proprietor additional rights and make it easier for them to enforce the same. Trademarks and patents should be registered. A business can own rights in a trademark without registration as well, if such a mark has been used by the business. The process of registration of IP mainly includes identification and selection of IP, conducting a public search to check for prior existing IP with confirmed or pending registration, filing of application, examination of such application by the concerned IP Registry or Office, eradication of issues, if any are pointed out by the IP Registry, and the confirmation of registration upon acceptance of the application.[4] The process of registration for each kind of IP may vary depending on the steps laid down in the respective laws discussed above.

4 Please see our research paper titled "Intellectual Property Law in India": https://www.nishithdesai.com/Content/document/pdf/ResearchPapers/Intellectual_Property-Law_in_India-Web.pdf.

Documentation

There must be proper and thorough documentation in case of licensing and assignment of IP to another party. For instance, assignment of a copyright is not valid unless such assignment is in writing and signed by the assignor; additionally, such an assignment must identify the work and the rights assigned, the territorial extent (otherwise it is deemed to be India), and the duration of the assignment (otherwise it is deemed to be 5 year). In addition, if the assigned rights are not exercised by the assignee within a period of one year from the date of assignment, the assigned rights revert to the assignor unless the parties contract out of such a provision. Similarly, for recording of the assignment with the Trademarks Registry, the deed of assignment is required to be filed along with applicable form and in some cases, a separate trademark assignment deed / agreement may be filed with the Trademarks Registry. In case of patents, a valid assignment under the Patents Act requires the assignment to be in writing, to be contained in a document that embodies all terms and conditions. Furthermore, under Indian laws, every instrument is required to be stamped as per the applicable stamp laws, which are state specific. The instrument, which is not stamped cannot be admitted as evidence in a court, expect in certain cases.

Timely Enforcement

As discussed above, IP protection safeguards an entity's competitive advantage. Protecting IP also enables businesses to legally establish and protect brand image and their products and/or services. This exclusivity allows the entity to capitalize on their innovations and maintain a distinct market position, thereby ensuring a sustainable competitive edge. IP protection also bolsters a business's ability to attract investors and secure financing. Investors are more willing to provide funding to businesses with well-protected IP because it signifies a commitment to preserving and leveraging valuable assets. Furthermore, IP protection is crucial for revenue generation and monetization. Businesses can license or sell their intellectual property rights to other companies, generating additional income streams. Additionally, strong IP protection provides the legal foundation for enforcing rights and pursuing legal action against infringing parties, potentially leading to financial settlements or royalties.

In India, infringement and passing-off actions can be instituted by filing a suit in the appropriate court. All IP laws state the appropriate court in which such suits can be instituted. For example, under the TM Act, suits for trademark infringement or passing off can be filed in the district court within the local limits of whose jurisdiction, at the time of the institution of the suit/other proceedings, the plaintiff/one of the plaintiffs (for example, registered proprietor, registered user) actually and voluntarily resides or carries on business or personally works for gain. Under the Copyright Act there is a similar provision as well. In India, court cases often reach a final hearing after twelve to sixteen years from the date of their filing. Therefore, obtaining an interim injunction becomes crucial for the plaintiffs, especially in intellectual property lawsuits. The damages are awarded only after the final hearing. Indian courts also grant injunctions in a quia timet (anticipatory) action if the plaintiff proves that defendant's activities or proposed activities would lead to violation of plaintiffs' rights.

Table 1

	Intellectual Property				
	Patents	**Trademarks**	**Copyrights**	**Designs**	**Confidential Information**
Nature / Type of IP					
Is the IP created In-house?					
Do contracts exist to assign the IP to the company? a. **with employees** b. **with contractors**					
Is the IP acquired / licensed by the company?					
If IP is acquired, is there a proper assignment agreement in place?					
If IP is licensed, is there a proper license agreement in place?					
Are the IP assignment / license agreements adequately stamped / franked?					
In case of a licensed IP, is the IP used as per the terms of the license?					
Are there any restrictions on the use of the IP?					
Is there any joint ownership of IP?					
If yes, what is the nature of rights the joint owners have in the IP?					
Is the IP registerable?					
If Yes, is it registered?					

Intellectual Property

	Patents	Trademarks	Copyrights	Designs	Confidential Information
What is the date of expiry of IP?					
If IP cannot be registered, is it protected by confidentiality agreements					
Is the IP in use?					
Where is the IP used?					
Is the IP being commercially exploited?					
Who / Which department is responsible for IP protection?					
Who / Which department is responsible for its management & enforcement?					
Is there a robust and effective IP protection, management and enforcement plan in place?					
What is the current approx. value of IP?					
Is the IP subject to any lien, encumbrances, third party rights?					
If IP violate/ infringe upon any third party rights, then is the matter at a litigation stage or can be resolved through mutual discussions					

Technology: Understanding Your Role and Responsibilities

Leveraging cutting-edge technology can empower Start-ups to streamline operations, reach wider audiences, and innovate at a pace previously unimaginable. However, amidst the whirlwind of technological advancement, it's crucial for Start-ups to recognize the importance of understanding the regulatory framework that governs their operations. This dual perspective ensures not only swift growth but also compliance with laws and regulations, safeguarding the long-term sustainability of the business.

A. Role of Different Technology Service Providers and Legal Compliances

Start-ups are often and rightly focused on building the best product/service possible for their customers. In a sea of endless competition, this remains the core focus for any Start-up. However, it is equally important for Start-ups to be aware of the legal compliance landscape. This is also important for a Start-up's branding, as a brand is built on trust, and compliance with relevant laws increases a brand's trustworthiness.

Several different technology-centric laws may be applicable to a company providing digital services. Depending on the business model, the company may be an intermediary or a publisher as understood under the Information Technology Act, 2000 ("**IT Act**"). Further, an entity providing any goods/services for a fee may be considered an "e-commerce entity" under the Consumer Protection Act, 2019. Different compliances are applicable to different types of entities. These laws are discussed in brief below:

Intermediaries in General

In India, intermediaries are governed under the IT Act, which defines an intermediary as *"any person who on behalf of another person receives, stores, or transmits that electronic record or provides any service with respect to that record"*.[1] This definition is very wide and covers a diverse set of service providers, ranging from telecom and internet service providers, search engines, web hosting service providers, to e-commerce platforms or even social media platforms.

Safe Harbour for Intermediaries

Intermediaries are granted a conditional safe harbour under the IT Act and the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* ("**Intermediary Rules**").

1 Section 2(w), IT Act.

Section 79 provides that an intermediary is not liable for any third-party information made available or hosted by such intermediary when:

a. The function of the intermediary is limited to providing access to the system over which information is made available by third parties or

b. The intermediary does not:

   i. initiate the transmission,

   ii. select the receiver of the transmission, and

   iii. select or modify the information contained in the transmission and

c. The intermediary observes due diligence while discharging his duties under the Act, Intermediary Rules or other guidelines prescribed by the government.

The Intermediary Rules provide for the kinds of due diligence/compliance all types of intermediaries must observe while discharging their duties. These include:

4. Publishing user terms and privacy policies clearly and prominently[2] that inform the user not to display, publish, upload, etc. certain categories of information.[3] Intermediaries are also expected to make reasonable efforts to cause users not to publish such content. Furthermore, they are required to inform users once a year of any change in the user terms[4] along with the fact that the intermediary may (1) terminate access to its services; or (2) remove non-compliant information, or both, in case of non-compliance with the user terms by the user.[5]

5. Taking down information on certain grounds within 36 hours[6] upon receiving actual knowledge in the form of a court order, or upon being notified by the 'Appropriate Government or its agency.'[7]

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2 Rule 3(1)(a), Intermediary Rules.

3 Information which:

i) belongs to another person and to which the user does not have any right;

ii) is obscene, pornographic, paedophilic, invasive of another's privacy including bodily privacy, insulting or harassing on the basis of gender, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or an online game that causes user harm, or promoting enmity between different groups on the grounds of religion or caste with the intent to incite violence;

iii) is harmful to child;

iv) infringes any patent, trademark, copyright or other proprietary rights;

v) deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any misinformation or information which is patently false and untrue or misleading in nature, or, in respect of any business of the Central Government, is identified as fake or false or misleading by such fact check unit of the Central Government as the Ministry may, by notification published in the Official Gazette, specify;

vi) impersonates another person;

vii) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting other nation;

viii) contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource;

ix) is in the nature of an online game that is not verified as a permissible online game;

x) is in the nature of advertisement or surrogate advertisement or promotion of an online game that is not a permissible online game, or of any online gaming intermediary offering such an online game;

xi) violates any law for the time being in force.

Explanation: In this clause, "user harm" and "harm" mean any effect which is detrimental to a user or child, as the case may be; violates any law for the time being in force;

4 Rule 3(1)(f), Intermediary Rules.

5 Rule 3(1)(c), Intermediary Rules.

6 Second Proviso to Rule 3(1)(d), Intermediary Rules.

7 Rule 3(1)(d), Intermediary Rules.

These grounds include:

a. Interest of the sovereignty and integrity of India;

b. Security of the State;

c. Friendly relations with foreign States;

d. Public order; decency or morality;

e. In relation to contempt of court;

f. Defamation;

g. Incitement to an offence relating to the above, or

h. Any information which is prohibited under any law.

6. Disable access to content which is *"prima facie in the nature of any material which exposes the private area of an individual, shows an individual in full or partial nudity or shows or depicts an individual in any sexual act or conduct, or is in the nature of impersonation in an electronic form, including artificially morphed images of an individual"*[8] within 24 hours from receipt of a complaint made by such individual or a person on their behalf. Intermediaries must also implement a mechanism for users to provide details regarding the link sought to be taken down.[9]

7. Provide any information based on information requests made in relation to investigation, prosecution, etc. of offences within 72 hours from receipt of such requests.[10] Furthermore, intermediaries are expected to preserve the records of any information that has been taken down voluntarily due to violation of their user terms, or pursuant to a user grievance complaining of obscene content about the user, for 180 days or for longer if prescribed by the relevant court or Governmental authorities.[11]

8. Report cyber security incidents and share related information with the Computer Emergency Response Team ("**CERT**") in accordance with the policies and procedures mentioned under the *Information Technology (The Indian Computer Emergency Response Team and Manner Of Performing Functions And Duties) Rules, 2013*.[12]

9. Appoint a grievance officer to deal with user complaints/grievances and publish (1) the name and contact details of the grievance officer, and (2) the procedure by which a user/victim may make a complaint relating to violation of certain provisions of the IT Rules, or other matters, on its websites/mobile application of the intermediary.[13]

Social Media Intermediary and Significant Social Media Intermediaries

Social media intermediaries ("**SMIs**") are defined as those intermediaries that primarily or solely enable online interaction between two or more users and allow them to create, upload, share, disseminate, modify or access information using their services.[14]

8 Rule 3(2)(b), Intermediary Rules.
9 Rule 3(2)(c), Intermediary Rules.
10 Rule 3(1)(j), Intermediary Rules.
11 Rule 3(1)(g), Intermediary Rules.
12 Rule 3(1)(l), Intermediary Rules.
13 Rule 3(2), Intermediary Rules.
14 Rule 2(w), Intermediary Rules.

SMIs are required to follow the due diligence/compliances applicable to intermediaries in general (as discussed above). There are no additional compliances applicable to SMIs.

Significant social media intermediaries ("**SSMIs**") are defined as those that social media intermediary having number of registered users in India above such threshold as notified by the Central Government.[15] The Government has defined this threshold as 50 lakh registered users in India.[16]

SSMIs have certain key additional compliances applicable to them such as:

1. Appointing key compliances persons being a chief compliance officer, nodal contact person and regional grievance officer. [17]
2. Publishing monthly compliance reports detailing complaints received and actions taken by the SSMI in resolving those complaints.[18]
3. Enabling the identification of first originator of information on their platforms as may be required by a judicial order or Section 69 of the IT Act by a Competent Authority. [19]
4. Ensuring that for any paid ad service content provided by the SSMI, such paid ad is clearly demarcated as such and identifiable by the user.[20]
5. Proactively identifying and removing certain kinds of information such as those depicting rape, child sexual abuse or prohibited under any law for the time being in force in relation to the interest of the (i) sovereignty and integrity of India, (ii) security of the State, (iii) friendly relations with foreign States, (iv) public order; decency or morality, (v) in relation to contempt of court, (vi) defamation, (vii) incitement to an offence relating to the above or (viii) any information which is prohibited under any law for the time being in force.[21]

Online Gaming Intermediaries

An online gaming intermediary ("**OGI**") is defined as an intermediary who enables the users access to one more online games.[22] OGIs are subject to the due diligences/compliances applicable to intermediaries in general as discussed above. Furthermore, certain compliances applicable to SSMIs such as appointing key compliance persons and publishing monthly compliance reports are applicable to OGIs as well.

Apart from the above, OGIs have certain key additional compliances exclusively applicable to them, such as:

1. Including mandatory terms in the user agreement and privacy policy pertaining to (i) withdrawal or refund of the deposit made with the expectation of earning winnings, the manner of determination and distribution of such winnings, and the fees and other charges payable by the user (ii) the know-your-customer procedure followed by it for verifying the identity of the users of such online game (iii) the measures taken for protection of deposit made by a user for such online game; and (iv) the framework regarding verification of online real money games relating to such online game.[23]

15 Rule 2(v), Intermediary Rules.

16 https://www.meity.gov.in/writereaddata/files/Gazette%20Significant%20social%20media%20threshold.pdf.

17 Rule 4(a), Intermediary Rules.

18 Rule 4(d), Intermediary Rules.

19 Rule 4(2), Intermediary Rules.

20 Rule 4(3)(a), Intermediary Rules.

21 Rule 4(4) read with 3(1)(d) read with 4(8), Intermediary Rules.

22 Rule 2(qb), Intermediary Rules.

23 Rule 4(11), Intermediary Rules.

2. Ensuring that OGI does not itself finance by way of credit or enable financing to be offered by third party to users for the purpose of playing online games.[24]

3. Offering only those online games that are 'permissible' as stated by the online gaming self-regulatory body. [25]

Therefore, OGIs should ensure that any online real money games offered by them shall be in accordance with the above. It is important to note that such compliances described above shall apply in the same way to any notified online games,not just online real money games.[26]

E-commerce Entities

E-commerce is defined under the *Consumer Protection Act, 2019* ("**CPA**") as buying or selling of goods or services including digital products over digital or electronic network.[27] E-commerce entity is defined under the *Consumer Protection (E-Commerce) Rules, 2020* ("**E-commerce Rules**") as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce, but does not include a seller offering his goods or services for sale on a marketplace e-commerce entity.[28]

There are primarily two models of e-commerce being:

i. Marketplace: an e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers.[29]

ii. Inventory: an e-commerce entity which owns the inventory of goods or services and sells such goods or services directly to the consumers and shall include single brand retailers and multi-channel single brand retailers.[30]

The kinds of compliances applicable to e-commerce entities include general compliances and specific compliances applicable to the model of e-commerce being operated.

General compliances include:

1. Displaying information relating to the (i) legal name of the e-commerce entity, (ii) principal geographic address of its headquarters and all branches, (iii) name and details of its website; and (iv) contact details like e-mail address, fax, landline and mobile numbers of customer care as well as of grievance officer, clearly to users.[31]

2. Not adopting any unfair trade practices.[32]

3. Establishing an adequate grievance redressal mechanism and appointing a grievance officer for consumer grievance redressal.[33] Furthermore, it shall ensure that the grievance officer acknowledges complaints within 48 hours and resolves them within one month from date of receipt of the complaint.[34]

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24 Rule 4(13), Intermediary Rules.
25 Rule 4A(1), Intermediary Rules.
26 Rule 4C(2) , Intermediary Rules.
27 Section 2(16), CPA.
28 Rule 3(b), E-commerce Rules.
29 Rule 2(g), Ecommerce Rules.
30 Rule 2(f), Ecommerce Rules.
31 Rule 4(2), Ecommerce Rules.
32 Rule 4(3), Ecommerce Rules.
33 Rule 4(4), Ecommerce Rules.
34 Rule 4(5), Ecommerce Rules.

4. Mention the name and details of any importer from whom it has purchased such goods or services, or who may be a seller on its platform.[35]

5. Record the consent of a consumer for the purchase of any good or service offered on its platform where such consent is expressed through an explicit and affirmative action, and not record such consent automatically, including in the form of pre-ticked checkboxes.[36]

6. Effect all payments towards accepted refund requests of the consumers as prescribed by the Reserve Bank of India or any other competent authority within a reasonable period of time.[37]

7. Not manipulate the price of the goods or services offered on its platform so as to gain unreasonable profit.[38]

8. Not discriminate between consumers of the same class or make any arbitrary classification of consumers affecting their rights under the CCPA.[39]

Specific compliances include, but are not limited to:

i. For marketplace ecommerce entities:

   1. Require sellers through an undertaking to ensure that descriptions, images, and other content pertaining to goods or services on their platform is accurate and corresponds directly with the appearance, nature, quality, purpose and other general features of such good or service.[40]

   2. Include in its terms and conditions generally governing its relationship with sellers on its platform, a description of any differentiated treatment which it gives or might give between goods or services or sellers of the same category.[41]

   3. Take reasonable efforts to maintain a record of relevant information allowing for the identification of all sellers who have repeatedly offered goods or services that have previously been removed or access to which has previously been disabled under the Copyright Act, 1957 (14 of 1957), the Trademarks Act, 1999 (47 of 1999) or the Information Technology Act, 2000 (21 of 2000).

ii. For inventory ecommerce entities:

   1. Shall not shall falsely represent itself as a consumer and post reviews about goods and services or misrepresent the quality or the features of any goods or services.[42]

   2. Must ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services.[43]

   3. Shall not refuse to take back goods or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund consideration, if paid, if such goods or services are defective, deficient spurious, or if the goods or services are not of the characteristics or features as advertised or as agreed to.[44]

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35 Rule 4(6), Ecommerce Rules.

36 Rule 4(9), Ecommerce Rules.

37 Rule 4(10), Ecommerce Rules.

38 Rule 11(a), Ecommerce Rules.

39 Rule 11(b), Ecommerce Rules.

40 Rule 5(2), Ecommerce Rules.

41 Rule 5(4), Ecommerce Rules.

42 Rule 7(2), Ecommerce Rules.

43 Rule 7(3), Ecommerce Rules.

44 Rule 7(4), Ecommerce Rules.

B. Data Protection

With the advent of the *Digital Personal Data Protection Act, 2023* ("**DPDPA**"), India now has a dedicated standalone data protection legislation. The Indian Government has been in the process of introducing such legislation since 2018. The provisions of the DPDPA as well as its rules have not been enacted. Once enacted, they will replace the *Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011.*

The DPDPA applies to the processing[45] of digital personal data in India, where the personal data is either (i) collected in digital form; or (ii) collected in a non-digitized format and subsequently digitized.[46] It also applies to the processing of digital personal data outside the territory of India, if such processing is in connection with any activity related to offering of goods or services to Data Principals within the territory of India.[47]

Personal data has been broadly defined under the Act to include any data about an individual who is identifiable by or in relation to such data.[48] The provisions of the DPDPA do not apply to (i) personal data by an individual for personal or domestic purposes, and (ii) personal data that is made or caused to be made publicly available by (a) the data principal to whom such personal data relates, or (b) any other person who is under a legal obligation to make personal data publicly available.[49]

The DPDPA introduces a several compliance requirements for collection and processing of personal data. The compliances are to be implemented by Data Fiduciaries and Data Processors while processing the personal data of Data Principals.

These are the key factors to which the DPDPA applies and are defined as follows:

1. Data Fiduciary is defined as any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data.[50]
2. Data Processor is any person who processes personal data on behalf of a Data Fiduciary.[51]
3. Data Principal is the individual to whom the personal data relates. Where such individual is a child, it would include the parent or lawful guardian of the child. Where the individual is a person with disability, it includes their lawful guardian acting on behalf of such individual.[52] Thus, it is clear that the DPDPA covers personal data of natural individuals only.
4. Consent manager consent manager has been defined as a person registered with the Board and acts as a single point of contact to enable a Data Principal to give, manage, review and withdraw their consent through an accessible, transparent and interoperable platform.[53]

45 Processing is defined under Section 2(x) of the DPDPA as wholly or partly automated operation or set of operations performed on digital personal data, and may includes operations such as collection, recording, organisation, structuring, storage, adaptation, alteration, retrieval, use, alignment or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction.

46 Section 3(a), DPDPA.

47 Section 3(b), DPDPA.

48 Section 2(t), DPDPA.

49 Section 3(c), DPDPA

50 Section 2(i), DPDPA.

51 Section 2(k), DPDPA.

52 Section 2(j) DPDPA.

53 Section 2(g), DPDPA.

At the moment, these provisions are open-ended, leaving much to be prescribed by the Central Government in the rules to follow. Nonetheless, some of the key compliances introduced include:

1. Notice and consent: The DPDP Bill requires the data fiduciary to provide notice[54] and obtain consent[55] from the data principal on or before processing personal data. The notice accompanying a request for consent must inform the data principal of: (i) the personal data to be processed and purpose for which such data is to be processed; (ii) the manner in which she may exercise her rights under the DPDP Bill; and (iii) the manner in which the data principal may make a complaint to the Board. The DPDP Bill provides that such notice must be "in such a manner and as may be prescribed".

   The consent should be freely given, specific, informed and unambiguous, with clear affirmative action.[56] The consent should be limited to such personal data as is necessary for the specified purpose in the request for consent.[57] Upon withdrawal of consent, the Data Principal is required to cease and cause its data processors to cease processing of the personal data within "a reasonable time".[58]

2. Correction, completion, updation or erasure of personal data: The Data Fiduciary has the obligation to ensure the accuracy, completeness, and consistency of the personal data when such personal data is processed to make a decision that affects the data principal or if the personal data is likely to be disclosed another data fiduciary.[59] Furthermore, the data principal has the right to request correction, completion, updation and erasure of their personal data by the Data Fiduciary.[60]

   The Data Principal may also request erasure of their personal data. Upon such request, the Data Fiduciary shall erase the personal data unless retention is necessary for a legal purpose.[61]

3. Retention of personal data: The Data Fiduciary must erase and cause its data processor to erase the personal data, (i) upon receipt of a withdrawal request, or (ii) as soon as it is reasonable to assume that the specified purpose is no longer being served, whichever is earlier, unless retention is necessary for compliance with any law in force.[62]

4. Grievance redressal: Data Fiduciaries are mandated to stablish an effective mechanism to redress the grievances of Data Principals.[63] This includes, inter alia, publishing the business contact information of a Data Protection Officer ("**DPO**"), if applicable, or a person who is able to answer on behalf of the data fiduciary, the data principal's questions about the processing of their personal data.[64]

   Data Principals have the right to register their grievances with the Data Fiduciary or the consent manager in respect of any act or omission of such Data Fiduciary or consent manager regarding the performance of their obligations in relation to the personal data of such Data Principal or the exercise of their rights under the DPDPA.

54 Section 5, DPDPA.
55 Section 6, DPDPA.
56 Section 6(1), DPDPA.
57 Section 6(1), DPDPA.
58 Section 6(6), DPDPA.
59 Section 8(3), DPDPA.
60 Section 12(1), DPDPA.
61 Section 12(3), DPDPA.
62 Section 8(7), DPDP Bill.
63 Section 8(10), DPDPA.
64 Section 8(9), DPDPA.

5. Technical measures, security safeguards and notification of breach: The Data Fiduciary shall implement appropriate technical and organizational measures to ensure effective adherence with the provisions of the DPDPA. This includes the obligation of the Data Fiduciary to protect personal data in its possession or under its control by taking reasonable security safeguards to prevent personal data breach. The DPDPA does not yet prescribe or recommend the standards that should be implemented. Furthermore, in the event of any personal data breach, the Data Fiduciary shall notify the Board and each affected Data Principal in the form and manner as may be prescribed.[65]

6. Transfer of cross-border data: The DPDPA empowers the Central Government to restrict the transfer of personal data by a Data Fiduciary to notified countries or territories outside of India.[66] Hence, transfer would be permissible to all countries until any of them are blacklisted by the government. However, if any Indian law (especially sectoral laws) provides for a higher degree of protection or restriction on transfer of personal data outside India, then such laws would continue to apply and will prevail over the DPDPA.[67]

7. Handling personal data of children and persons with disabilities: Data Fiduciaries are required to obtain verifiable consent prior to processing the child's personal data (from the parent), or personal data of a person with disability (from the lawful guardian) who has a lawful guardian, in a form as may be prescribed.[68] Under the DPDPA, a 'child' is an individual below eighteen years.[69]

   Data fiduciaries processing personal data of children have to comply with additional obligations:

   i. Data fiduciaries are prohibited from undertaking processing of personal data of children which is likely to cause detrimental effect to a child, as may be prescribed by the Central Government;[70]

   ii. Data fiduciaries are prohibited from, tracking and behaviorally monitoring children, and directing targeted advertising at them.[71]

Therefore, the DPDPA marks the beginning of an entire new data regime for India, and will be especially important for Start-ups to comply with going forward.

65 Section 8(6), DPDPA.
66 Section 16(1), DPDPA.
67 Section 16(2), DPDPA.
68 Section 9(1), DPDP Bill.
69 Section 2(f), DPDP Bill.
70 Section 9(2), DPDP Bill.
71 Section 9(4), DPDP Bill.

C. Adoption of New Technologies: AI

AI has emerged as a powerful tool for content creation in the last few decades. AI is essentially the method of making machines mimic human intelligence, and Generative AI ("**GAI**") is its branch that uses machine learning technology for the generation of new content. GenAI has been a disruptive technology that has become commonplace for many businesses within just a year.

However, as with any new technological innovation, AI and GAI pose both opportunities and risks. Some of these key risks and challenges include:

Veracity of Information and Fake News

There are serious concerns about its potential misuse for spreading fake news on a large scale. Such misinformation can have serious ramifications, such as distorting public perceptions and eroding confidence in societal structures and systems. GAI models can also be used to create fake social media accounts or bots to spread false information making it challenging for individuals to find credible sources of information, therefore, making it harder for people to engage in informed and constructive discussions.[72]

However, GAI also has the capability to detect fake news[73] and thus its benefits and drawbacks will only be more apparent over time.

Generative AI and Intellectual Property Rights

Ownership and IP rights in GAI produced works has been subject to heated debate. There are arguments on both sides for granting copyright to GAI works based on human instruction. One of the issues pertaining to the grant of copyright revolves around authorship. The Indian Copyright Act, 1957 ("**Copyright Act**") is unclear as to the 'author' of AI-created works under Indian copyright law. The Copyright Act recognizes that computer-generated works have authors, i.e., the person who "causes" the work to be created, however, it does not define computer-generated works or the extent of human involvement in such works, if any.

It is thus unclear which actor i.e., the AI software provider (e.g., ChatGPT), the user creating the prompt or the original author of the work the AI model has been trained upon, is the author of outputs produced using GAI.

Another issue pertains to the inputs used by GAI. GAI is trained on existing data in the form of text, images, or sound recordings, all of which could potentially be copyright-protected works. Thus, whether the use by GAI of existing copyrighted work amounts to infringement would be a case-wise analysis where it would be important to ascertain if relevant copyright permissions have been taken for the training of the GAI model.

72 See: https://www.analyticsinsight.net/chatgpt-can-be-used-to-disseminate-fake-news-on-a-large-scale, last visited on September 28, 2023.

73 See: https://ieeexplore.ieee.org/stamp/stamp.jsp?arnumber=9620068, last visited on September 28, 2023.

D. Cybersecurity Risks

The fourth industrial revolution involves digitization in virtually every facet of our lives including the risks and threats faced by us. Such threats include cyber threats, which make virtually everyone who has access to the internet a potential victim. On the other side, a variety of actors are behind cyber threats including terrorist organisations, criminal groups, hackers, malicious insiders and even hostile countries.[74]

While there are several kinds of cybercrimes and threats, they are mainly classifiable into:

i. **External Threats**: these are by external actors, i.e., outside an organisation or entity.

ii. **Internal Lapses / Unauthorized Access**: this is by actors from within an organisation that might exploit the organisation's system in an unauthorised manner.

iii. **Physical Security**: in relation to compromise of physical locations of computer networks of the company, including due to natural disasters, theft and terrorism.

The Government of India has recognized the new age cybersecurity threats and has been taking multiple steps towards addressing these concerns. Institutions such as the Indian Computer Emergency Response Team ("**CERT-In**"), the National Cyber Coordination Centre ("**NCCC**") established by CERT-In, among others, are involved in collection of information on and mitigation of cybersecurity incidents.

CERT-In is the national agency of India for performing various functions with respect to cybersecurity in India, including for (i) collection, analysis and dissemination of information on cyber incidents; (ii) issuing forecast and alerts of cyber security incidents; (iii) undertaking emergency measures for handling cyber security incidents, etc.[75] CERT-In also has the power to call for information and give directions to service providers, intermediaries, data centers, body corporate and any other person.[76]

CERT-In has also issued certain directions on April 28, 2022[77] ("**Directions**"), which supplement the *Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013* ("**CERT-In Rules**"). CERT-In Rules contain additional compliance requirements for service providers, intermediaries, data centres, body corporate and Government organisations ("**Entities**"). The Ministry of Electronics and Information Technology ("**MeitY**"), on May 18, 2022, also issued a list of frequently asked questions[78] ("**FAQs**") on the Directions which provide clarifications on certain aspects of the Directions.

74 Imperva team, Cyber security threats, Learning Center, Imperva (2021), available at: https://www.imperva.com/learn/application-security/cybersecurity-threats, last accessed on September 28, 2023.

75 Section 70B, IT Act.

76 Section 70B (6), IT Act.

77 See: https://www.cert-in.org.in/PDF/CERT-In_Directions_70B_28.04.2022.pdf, last accessed on September 28, 2023.

78 See: https://www.cert-in.org.in/PDF/FAQs_on_CyberSecurityDirections_May2022.pdf, last accessed on September 28, 2023.

The compliance requirements under the CERT-In Rules and Directions can be categorized into three broad categories:

1. **Mandatory Ongoing Compliances**: these are applicable to (i) Entities having a computer, computer system, or computer network ("**Computer Infrastructure**") in India and (ii) Entities having Computer Infrastructure outside India, if there is a high probability that any incident which affects such computer infrastructure outside India also has an impact on any Computer Infrastructure in India (such as due to the nature of connectivity between these Computer Infrastructure).[79]

   These compliances include designation of a PoC to interface with CERT-In[80], maintenance of all logs for 180 days[81], system clock synchronization with Network Time Protocol (NTP) Server of National Informatics Centre (NIC) or National Physical Laboratory (NPL)[82], etc.

2. **Conditional Compliances**: these are applicable to (i) all Entities having Computer Infrastructure in India; and (ii) Entities which have Computer Infrastructure outside India, and such Computer Infrastructure is impacted by an incident which (a) in turn impacts the Entity's Computer Infrastructure located within the Indian territorial jurisdiction; or (b) originated in India.

   These compliances include mandatory reporting of cybersecurity incidents under Annexure I to the Directions[83] and compliance with CERT-In Directions and provision of information/assistance. Additionally, any incident stated in Annexure I meeting the following criteria should be reported within 6 hours of the relevant entity having noticed or having been brought to notice of such incident:

   - Cyber incidents and cybersecurity incidents of severe nature (such as denial of service, distributed denial of service, intrusion, spread of computer contaminant including Ransomware) on any part of the public information infrastructure including backbone network infrastructure;
   - Data breaches or data leaks;
   - Large-scale or most frequent incidents such as intrusion into computer resource, websites etc.;
   - Cyber incidents impacting safety of human beings.

3. **KYC Requirements for Identified Service Providers**: these are likely to be applicable to any identified service provider which offers services to customers in India, irrespective of the location of the Computer Infrastructure, or the impact or origination of any incident which affects such Computer Infrastructure.

   These compliances include KYC requirements for specific entities such as data centres, cloud service providers, virtual private network (VPN) service providers and virtual private server (VPS) providers ("**Identified Service Providers**").[84] The terms "data centres", "cloud service providers", "VPN service providers" and "VPS providers" have not been defined under the Directions or CERT-In Rules.

79 There is no requirement for Entities outside India to comply with ongoing compliance requirements (such as appointment of a Point of Contact) unless such Entity owns any Computer Infrastructure in India. However, if there is a high probability that an incident which impacts any Entity's Computer Infrastructure outside India also impacts Computer Infrastructure within India (for e.g., due to the nature of connectivity) the Entity which owns such Infra should comply with the ongoing compliance requirements under the Directions and CERT-In Rules with respect to the relevant Computer Infrastructure outside India. This is because such Entity may generally be aware of the possibility of such an incident and its impact on Computer Infrastructure within India, irrespective of whether such an incident occurs or not.

80 Paragraph (iii) of the Directions.

81 Paragraph (iv) of the Directions.

82 Paragraph (i) of the Directions.

83 See: https://www.cert-in.org.in/PDF/CERT-In_Directions_70B_28.04.2022.pdf, last accessed on September 28, 2023.

84 Paragraph (v) of the Directions.

If any Entity falls under the purview of Identified Service Providers, and provides services to customers in India, such entity must register certain accurate information which must be maintained by them for a period of 5 years or longer duration as mandated by the law after any cancellation or withdrawal of the registration as the case may be:

- Validated names of subscribers/customers hiring the services
- Period of hire including dates § IPs allotted to / being used by the members
- Email address and IP address and time stamp used at the time of registration / on-boarding
- Purpose for hiring services
- Validated address and contact numbers
- Ownership pattern of the subscribers / customers hiring services

Additionally, the CERT-In Rules contain the following requirements with respect to various Entities:

1. **Incident reporting**: All individuals, organisations and corporate entities are mandatorily required to report certain identified cybersecurity incidents[85] to CERT-In, as early as possible. Other cybersecurity incidents may be voluntarily reported to CERT-In.
2. **Appointment of Point of Contact**: All service providers, intermediaries, data centres and body corporate are required to designate a Point of Contact (“**PoC**”) to interface with CERT-In, and furnish information relating to such PoC to CERT-In in the specified format.
3. **Compliance with CERT-In directions and requests for information**: All service providers, intermediaries, data centres, body corporate and other persons are required to provide such information and comply with directions as may be required by CERT-In. Contravention of the above provisions under the CERT-In Rules may attract liability for compensation (payable to the person affected by such contravention) / a penalty of up to INR 25,000 (approx. USD 320).[86]

85 The Annexure to the CERT-In Rules identifies the following incidents to be mandatorily reported:
- Targeted scanning/probing of critical networks/systems.
- Compromise of critical systems/information.
- Unauthorised access of IT systems/data.
- Defacement of website or intrusion into a website and unauthorised changes such as inserting malicious code, links to external websites etc.
- Malicious code attacks such as spreading of virus/worm/Trojan/Botnets/Spyware.
- Attacks on servers such as Database, Mail and DNS and network devices such as Routers.
- Identity Theft, spoofing and phishing attacks.
- Denial of Service (DoS) and Distributed Denial of Service (DDoS) attacks.
- Attacks on Critical infrastructure, SCADA Systems and Wireless networks.
- Attacks on Applications such as E-Governance, E-Commerce etc.

86 Section 45, IT Act.

Start-ups and CSR

A. Allocation of CSR Funds to Technology Incubators

The allocation of Corporate Social Responsibility (CSR) funds to Start-ups has sparked debates due to uncertainties surrounding the actual societal impact of Start-ups and their ability to address social and environmental issues. Notably, out of India's total CSR spending of over ₹20,000 crore, less than ₹100 crore is directed towards incubators, which can then channel funds to Start-ups. However, amidst the pressing climate challenges disproportionately affecting economically vulnerable populations, CSR offers a beacon of hope by supporting early-stage climate Start-ups focused on critical areas like water, waste management, and agriculture, which require patient capital.

Corporate entities are allowed to invest their CSR funds in Start-ups through technology incubators. The permission to invest in select technology incubators was granted in 2014 and further expanded in 2021 to encompass all government-funded incubators. Nevertheless, incubators have struggled to attract CSR capital for Start-ups in general, including climate and sustainability-based Start-ups (“**CASS**”), which constitute a relatively new category.

CASS may represent an exception due to their capacity to address localized issues like improving access to clean water and enhancing agricultural practices. These align with CSR budget objectives and can assist corporations in achieving their sustainability targets.

India boasts a roster of over 2,000 CASS, spanning themes such as electric mobility, renewable energy, agriculture, sustainable food, and WASH (Water, Hygiene, Sanitation). Many of these Start-ups face financing challenges, especially in the early stages of product development when they are not yet ready for venture capital or debt financing. Paradoxically, significant CSR funds, totalling over ₹1,500 crore, are earmarked for various sustainability initiatives such as clean water provision, distribution of clean cooking stoves, and agroforestry. However, these initiatives may experience linear growth, unlike Start-ups with the potential for rapid expansion and large-scale impact.

In the context of corporate CSR spending, the primary objectives are visibility and goodwill generation. Corporations aspire to have their CSR initiatives, such as donating ambulances, recognized, thereby fostering a positive brand image. Simultaneously, they seek to deliver tangible benefits to local communities, including improvements in education and healthcare in areas where they operate.

Nevertheless, corporations encounter challenges, including limited resources within their CSR teams for evaluating trustworthy agencies and a lack of strategic alignment between CSR objectives and corporate missions, often resulting in ad hoc spending. Conversely, most incubators are relatively young, less than five years old, and may not have well-established relationships with corporate CSR teams. Fundraising from CSR may not be their top priority, given the time and effort required to build relationships, submit proposals, and the limited visibility they can offer to corporations.

Investing in CASS aligns well with CSR objectives of giving back to local communities. However, for corporations to fully support CASS, a few of these need to achieve substantial success, showcasing their impact and generating goodwill for the corporations. Currently, only a handful of incubators possess the expertise required to identify and nurture CASS, underscoring the necessity to develop and enhance this skill set.

B. Expanding the Scope of Eligible Incubators to Allow Social Business Incubators to Receive CSR Funding

Previous regulations under the Companies Act, 2013 ("**Companies Act**") included a provision in Schedule VII that allowed companies to consider supporting technology incubators situated within accredited academic institutions endorsed by the central government as an eligible activity within their Corporate Social Responsibility (CSR) Policy.

Under the updated regulations, the previous provision limited support to technology incubators within specific premises and excluded assistance to other incubators focused on technology and innovation outside academic institutions. To expand the scope of Corporate Social Responsibility (CSR) and enhance funding opportunities for incubators, the government recently announced that companies can allocate 2% of their CSR funds to support incubators funded by the Central or State Government, public sector undertakings, and make contributions to institutions like Indian Institutes of Technology (IITs), National Laboratories, and various Autonomous Bodies. These organizations, which receive support from the Indian Council of Agricultural Research (ICAR), publicly funded universities, Council of Scientific and Industrial Research (CSIR), Indian Council of Medical Research (ICMR), Department of Atomic Energy (DAE), Department of Science and Technology (DST), Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT), and Ministry of Electronics and Information Technology (MeitY), are engaged in research in the fields of science, engineering, technology, and medicine aimed at advancing Sustainable Development Goals (SDGs).

Per Rule 17C of the Income-tax Rules, "incubatee" shall mean such incubatee as may be notified by the Government of India in the Ministry of Science and Technology. Further, "incubator" shall mean such Technology Business Incubator or Science and Technology Entrepreneurship Park as may be notified by the Government of India in the Ministry of Science and Technology. Any incubator falling under the aforementioned categories is qualified to receive donations from a qualifying corporation as part of the corporation's CSR Policy. However, this does not grant the same entitlement to the Start-ups being incubated within these incubators. The government's amendment is a positive development, as it facilitates increased financial resources for the supported incubators to enhance their facilities and operations. It also enables companies to allocate their funds to nurture new businesses that receive support and guidance from these incubators. Furthermore, it empowers corporations to actively engage with Start-ups, offering mentorship and monitoring to those that align with their strategic goals.

In order to leverage CSR funding, it is important that the definition of incubatee and incubator be further expanded to allow social business incubators to receive CSR funding as well.

C. Allowing Traditional Non-profits and/or Foundations to Invest in Social and Technology Incubatees with Tax Incentives

The worlds of technology, social entrepreneurship, and philanthropy are rapidly evolving. Traditional non-profits and foundations have long played a pivotal role in addressing societal issues and supporting charitable causes. However, in the digital age, innovative social and technology-driven solutions are increasingly becoming the engines of positive change. To bridge these worlds and drive impactful progress, it's crucial to explore avenues that encourage non-profits and foundations to invest in social and technology incubatees and businesses. One effective method to achieve this synergy is through offering tax incentives.

Section 11(5) of the Income Tax Act, 1961 ("**ITA**") read with rule 17C of the Income Tax Rules, 1963 ("**ITR**"), lays down the framework for investments out of the monies referred to in section 11(2)(b) of the ITA. The permissible investments under section 11(2)(b) of ITA are as follows:

- investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;
- deposit in any account with the Post Office Savings Bank;
- deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).
- investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);
- investment in any security for money created and issued by the Central Government or a State Government;
- investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;
- investment or deposit in any public-sector company in the manner mentioned in section 11(5)(vii) of the ITA:
  - deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is eligible for deduction under the provisions of the ITA;
  - deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under the provisions of the ITA;
  - deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India in the manner mentioned in section 11(5)(ixa) of the ITA.
  - investment in immovable property in the manner mentioned in section 11(5)(x) of the ITA.
  - deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);
  - any other form or mode of investment or deposit as may be prescribed.

- Rule 17C of the Income Tax Rules, 1963 lays down further and other modes and forms of investments and deposits of the monies mentioned under section 11(2)(b) of the ITA which are as follows:
- Investments in units issued under any scheme of mutual fund referred to in section 10(23D) of the ITA;
- Any transfer of deposits to Public Account of India;
- Deposits made with an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;
- Investment by way of acquiring equity shares of a 'depository';
- Investment made, on or after 26-11-1999, by a recognized stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (hereafter referred to as "Investor") in the equity share capital of a company (hereafter referred to as "Investee"): (a) which is engaged in dealing with securities or mainly associated with the securities market; (b) whose main object is to acquire the membership of another recognized stock exchange for the sole purpose of facilitating the members of the Investor to trade on the said stock exchange through the Investee in accordance with the directions or guidelines issued under the Securities and Exchange Board of India Act, 1992 by the Securities and Exchange Board of India established under section 3 of that Securities and Exchange Board of India Act, 1992; and (c) in which at least fifty-one per cent of equity shares are held by the Investor and the balance equity shares are held by members of such Investor;
- Investment made on or after 1-3-2007 by way of acquiring equity shares of an incubatee by an incubator. *(The term 'incubatee' shall mean such incubatee as may be notified by the Government of India in the Ministry of Science and Technology. The term 'incubator' shall mean such Technology Business Incubator or Science and Technology Entrepreneurship Park as may be notified by the Government of India in the Ministry of Science and Technology)*; and
- Investment by way of acquiring shares of National Skill Development Corporation.

The ITA provisions should also allow for investments into climate and sustainability-based and social business incubators and/or such similarly placed Start-ups directly by amending the provisions of Rule 17C of the ITA. Further, it must be clarified that NGOs/foundations undertaking such investments should not risk losing its tax-exempt status.

Governance Pillars

The governance pillars of Start-ups are the foundation upon which their success is built. Incubators and accelerators provide essential guidance and resources, while mentors and advisors play a critical role in nurturing and guiding these budding ventures. Government support and a streamlined regulatory environment are the cornerstones of a thriving Start-up ecosystem.

A. Role of Start-up Incubators and Accelerators

Business incubators support entrepreneurs in the early stages of business development, aiming to accelerate the growth and success of Start-ups and early-stage companies. These organizations typically have expertise in the business and technology sectors. Their support includes offering technological resources, initial funding, networking opportunities, co-working spaces, mentorship, and advisory services. They often serve as a pathway to funding from angel investors, government agencies, venture capitalists, and other investors.

Incubators may have capital to invest in growing Start-ups or connections to potential funding sources. They provide access to professional services such as legal and accounting expertise, along with invaluable mentoring and networking opportunities.

As essential components of the Start-up ecosystem, incubators contribute to regional and national economic development. Various types of incubators exist, including those affiliated with academic institutions, non-profit organizations, for-profit ventures, venture capital firms, and combinations thereof.

Incubators may operate physically, fostering in-person networking, or virtually. Some may use the term *"accelerator"* when focused on more advanced businesses.

On the other hand, Accelerators, on the other hand, focus on fast-tracking a Start-up's growth by providing intensive, time-bound programs that include mentorship, investment, and exposure to potential customers and investors.

Accelerators expedite the early growth of Start-ups and businesses by compressing years' worth of learning into shorter time frames, as opposed to letting them navigate the learning curve from scratch. They often also provide financial support to kickstart the growth process.

Accelerators, by nature, are typically led by well-established, profitable companies and are generally oriented towards profit generation.

B. Role of Mentors and Advisors

Start-up founders require a myriad of resources to kickstart their businesses, such as capital, connections, and time. However, one often underestimated resource is the invaluable support of mentors and advisors, who play a critical role in nurturing and guiding these nascent ventures as they progress.

Mentors contribute to Start-ups in various valuable ways, including imparting wisdom on business strategies, aiding in the identification and evaluation of opportunities, and extending their support through challenging phases. Advisors, on the other hand, play a vital role in connecting Start-ups with crucial resources and networks, which are often indispensable for achieving growth.

While the contributions of mentors and advisors are undeniably significant, it is imperative to select them judiciously. Start-ups should seek out mentors and advisors who possess industry-specific experience and a proven track record of success. Furthermore, it is essential to establish a rapport with them and ensure comfortable communication.

The involvement of mentors and advisors can prove instrumental in the success of Start-ups, furnishing them with the guidance, counsel, and support required to navigate the complexities of establishing and advancing a business. Therefore, when seeking a mentor or advisor, it is crucial to choose someone well-versed in your particular industry and with a demonstrated history of achievement.

C. Role of Government

The government funding and initiatives play a crucial role in cultivating and enriching Start-up ecosystems by offering essential financial support to empower early-stage Start-ups in surmounting financial hurdles and pursuing innovative concepts. In addition to financial assistance, government programs encompass a wide array of resources, including mentorship initiatives, networking opportunities, and access to specialized infrastructure, all of which are invaluable for the triumph of Start-ups. The Indian government serves as a captivating case study in this regard, having made substantial investments in various crucial domains to bolster its Start-up ecosystem.

Through endeavours such as Start-up India, Atal Innovation Mission, and Meity Start-up Hubs, the Indian government has strategically streamlined regulations, minimized bureaucratic impediments, and provided financial aid, mentorship programs, and networking opportunities. These concerted endeavours have positioned India as a prominent hub for innovative and technology-driven enterprises. Notably, India's remarkable advancement is underscored by its ascent to the 40th position in the Global Innovation Index (GII Report 2023), a significant leap from its previous rank of 81st in just eight years. This accomplishment highlights the profound influence of government investments in nurturing a thriving Start-up ecosystem.

Furthermore, the success stories of other thriving Start-up ecosystems in locations like Singapore, Israel, and Barcelona underscore the essential role of government funding and initiatives in stimulating growth and prosperity. The collaborative synergy between governments and Start-ups fosters an environment conducive to entrepreneurship, attracting talent, and incubating ground-breaking innovation. This symbiotic relationship contributes to economic expansion and aids in addressing intricate societal challenges. Government funding and initiatives act as catalysts for the development of vibrant Start-up ecosystems, propelling progress and enhancing society at large.

Governance Challenges and Solutions

It is evident that a good governance lays down the foundation for effective management, aligns the interests of all stakeholders, and promotes transparency and accountability in decision-making process at social and institutional level.

In the last decade, many emerging markets, international bodies, governments, financial institutions, public and private sector bodies have reformed their corporate governance systems and are encouraging initiatives towards good corporate governance for companies, markets at global level. Better regulatory and self-regulatory corporate governance frameworks and enforcement mechanisms are being implemented through tougher legislations and corporate governance codes. Despite having known the tangible benefits of good governance and its positive influence in company's performance, it is worth noting that the list of entities facing the corporate governance lapses is getting longer, making it more that evident that adhering to governance norms should be a permanent corporate process and implementing it at highest level within the organisation is need of the hour.

A. Common Governance Challenges Faced by Start-ups

Start-ups arguably face more challenges than any other business – particularly in the early stages of development and face several obstacles, such as a capital funding, lack of skilled or experience workforce, bureaucratic obstacles, access to relevant market for steady growth and stiff competition from existing or established businesses. At times, they also face significant challenges on account of regulatory ambiguity or oversight, the culture and pressure of rapid growth at any cost, inadequate infrastructure and issues related to mentoring and scaling up of business operations in an organic way.

India has emerged as the third largest Start-up ecosystem just behind the China and United States. India's Start-up ecosystem continues to expand despite these obstacles, and several government initiatives aim to support and encourage entrepreneurship in the nation. However, in recent times, the Start-up market has not been receiving a very higher amount of funding from venture capital and private equity firms, possibly due to the emerging and reported corporate governance lapses among the Start-ups.

Start-ups do face a unique set of challenges when it comes to corporate governance. Below listed are some of the common governance challenges faced by Start-ups and fixing them requires assistance and participation from all stakeholders and a multi-faceted approach involving regulatory reforms and its procedures, enhanced transparency and accountability and strengthened oversight mechanisms within organisations.

Growth at the Speed of Thought

The Start-up ecosystem in India has been growing at a fast pace, with numerous new companies emerging in various sectors. However, many of these Start-ups are formed by very young aged founders with negligible or zero experience with limited business exposure / competence and they tend to have a limited understanding on importance of having proper ethical systems and corporate governance in place for long-term business growth and sustainability.

In their quest for rapid growth, innovation and cut-throat competition, their core focus is attracting funding in initial stages for their innovative products or services and they knowingly or unknowingly tend to neglect proper governance structures, compliances and procedures since inception, which is necessary in the long-term perspective.

In most Start-ups, Board is generally guided by one major event *'valuation'*. Promoters look for faster growth and capital and therefore, cut the edges, while non-promoter investors look for higher more valuations, so as to multiply their investments and make a profitable exit. These instances of promoter greed and investor appetites for higher valuation has been a major cause for governance failures and brought down the companies and the promoters as well.

Proficorns over Unicorns

Many Start-ups are focused on achieving profitability quickly, which can lead to decisions that prioritize short-term gains over long-term sustainability and governance. Promoters of Start-ups often seek faster growth and capital, which can lead them to take shortcuts and engage in unethical practices. This approach can lead to governance failures and, in some cases, bring down the company and its promoters. In such scenarios, promoters and key management personnel may not be transparent and could resort to falsifying books of accounts with fake bills and invoices to make a quick profit. While the focus on valuation is important for Start-ups, it should not come at the expense of good governance practices and ethical conduct.

There is immense pressure on Start-ups receiving funds to demonstrate high and rapid growth on account of unreasonable target-setting and excessive focus on profits to attract and retain investors leading to coin the current buzz word *"Proficorn"*.

The pressure to grow at all costs often leads to shortcuts, lapses or compromises in governance practices and process they may have set up for governance. Start-ups at times, prioritize short-term gains and aggressive expansion instead of establishing robust governance systems by incorporating and implementing relevant policies and procedures for scalability and holistic growth.

Regulatory Overload

While Indian government has being taking multiple initiatives on the dedicated regulatory framework and Start-up-friendly policies and guidelines for the Start-up sector with various incentives in order to boost the Indian economy, it is still evolving and the entrepreneurs have been provided an upper hand with self-regulation instead of a dedicated or specifically tailored made robust regulations and guidelines for Start-ups for governance norms . This limited regulatory oversight can create gaps and loopholes that some Start-ups may exploit or neglect for their benefit, leading to governance lapses. In certain cases, founders may engage in particular acts due to a lack of ethical standards or a general disregard for the law.

Lack of Transparency and Accountability

Transparency is an essential element and should be evident in communications, decision making process, practices, policies, meetings, and other interactions of the organisation. Early Start-ups may have the culture of secrecy and limited transparency. Founders and management teams may be hesitant to share information or involve external stakeholders in decision-making processes. In absence of transparency, it can be difficult to hold decision-makers accountable for their actions, leading to a lack of responsibility, potential mismanagement and governance issues.

Hand-holding by Competent Legal, Compliance and Accounting Professionals

The Start-up ecosystem in India is highly competitive, and there is often a shortage of experienced and competent legal, compliance and accounting professionals who understand the governance practices and can hand-hold the Start-ups to formulate a robust internal control process and governance mechanism. Start-ups may struggle to recruit qualified individuals to manage governance effectively as at times, it is either ignored or considered as an unnecessary cost by the founders in a hurry to make the company look attractive to the potential investor instead by laying over emphasis on innovation, value addition to the product/service experience and demonstrating larger customer base for business scalability.

Intellectual Property Protection, Data Security and Privacy

Safeguarding intellectual property is critical for Start-ups. The processes of obtaining patents, trademarks, or copyrights can be expensive and time-consuming. Without robust IP protection, Start-ups may risk losing their innovations to competitors. India's legal system faces delays and inefficiencies in processing patent and trademark applications, making it difficult for Start-ups to safeguard their intellectual assets.

In today's digital world, Start-ups handle a significant amount of sensitive customer data. Ensuring data security and privacy compliance is a governance challenge that Start-ups must address to maintain trust and protect their reputation. Further, the Indian government has introduced data protection legislation, but many Start-ups lack the resources to comply with these regulations, resulting in governance challenges related to data breaches and privacy violations

Talent Retention

Attracting and retaining top talent is vital for Start-ups, but they often struggle to compete with established corporations when it comes to compensation and benefits. This challenge impacts governance as it can lead to high employee turnover rates, destabilizing the company's growth and performance.

B. Mitigating Risks Related to Finances, Compliance, and Operations

Considering recent financial irregularity, investor community is more focused to scrutinise a Start-up's financial statements, revenue models, profitability and cash-flow projections. They insist to assess the compliance of the business model with relevant laws and regulations. Hence, operational resilience, governance, and financial metrics should be key areas of focus for Start-ups in order to attract funding and therefore only, mitigating risks related to finances, compliance, and operations becomes a critical aspect of corporate governance which requires a proactive and integrated approach involving various stakeholders, including the board, management, employees, and external advisors.

Effective risk management helps organizations maintain their reputation, protect shareholder value, and ensure long-term sustainability and regular monitoring and continuous improvement of risk management practices are essential components of effective corporate governance. Here are some strategies to mitigate these risks under corporate governance:

Financial Risk Mitigation:

Financial Reporting and Transparency:

- prioritise maintaining well-organised books of accounts, adhering to proper accounting practices and providing reliable projections.
- Implement robust financial review, reconciliation and reporting processes, ensuring accurate and transparent financial statements by adopting globally accepted accounting standards
- Regularly communicate financial performance to shareholders and stakeholders through reports and disclosures.

Internal Controls

- Establish and maintain strong internal controls to prevent financial fraud/ errors or mismanagement and to safeguard the company's assets
- Conduct regular internal audits to identify weaknesses and address them promptly.

Risk Assessment:

- Perform regular risk assessments to identify potential financial risks.
- Develop risk mitigation plans for identified financial risks and monitor their effectiveness.

Diversification:

- Embrace the practice of revenue audit
- Diversify revenue streams and investments to reduce financial dependency on a single source.
- Create contingency funds for unexpected financial crises.

Compliance Risk Mitigation:

Compliance Programs:

- Develop and maintain comprehensive compliance programs that align with relevant laws, regulations, and industry standards related to the business and geography in which the Start-up operates with help of external legal professionals as and when needed;
- Regularly review and update compliance policies and procedures to adapt to changing legal requirements and knowledge about growing compliances should be done proactively
- Continuously assess and enhance the effectiveness of the corporate governance system. Regularly review policies, procedures, and performance metrics to identify areas for improvement.
- Seek feedback from board members, executives, investors, external professionals to gain insights and perspectives.
- Assign a compliance officer and form a competent and experienced in-house legal and secretarial team to monitor adherence to regulations, reporting of key regulatory compliance requirements, conduct internal audits, and address any compliance issues promptly.

Training and Education:

- Provide ongoing compliance training programs and workshops to employees at all levels including founders, executives and Board members at regular intervals
- Create awareness about the benefits of strong governance, best practices of governance and compliance principles relevant to business and industry and the potential consequences of lapses.
- Ensure that employees are aware of changes their roles and responsibilities in maintaining compliance thereby creating the culture of accountability.

Third-Party Due Diligence:

- Conduct thorough due diligence on third-party vendors, partners, and suppliers to ensure their compliance with regulations before on-boarding them.
- Establish contractual agreements that require third parties to adhere to compliance standards.

Whistle-blower Protection:

- Create a safe and confidential mechanism for employees and stakeholders to report any wrongdoing or unethical behaviour within the organization.
- Protect whistle-blowers from retaliation and ensure prompt investigation and resolution of reported issues. This fosters a culture of accountability, trust, and transparency within the company and helps in early detection and remediation of governance issues

Operational Risk Mitigation:

Business Continuity Planning:

- Develop and regularly update business continuity plans to ensure operations can continue in the event of disruptions.
- Test these plans through simulations and exercises.

Supply Chain Management:

- Diversify suppliers to reduce the risk of supply chain disruptions.
- Create contingency plans for supply chain interruptions, including alternative sourcing.

Technology and Data Security:

- Invest in robust cybersecurity measures to protect sensitive data and prevent cyberattacks.
- Regularly update software and systems to address vulnerabilities.

Employee Training:

- Train employees in safety protocols and emergency response procedures.
- Foster a culture of safety and operational excellence.

Environmental and Sustainability Considerations:

- Mitigate environmental and sustainability risks by adhering to relevant regulations and implementing eco-friendly practices.
- Monitor and report on environmental performance.

C. Implementing Effective Crisis Management and Contingency Plans

Contingency planning is the process of preparing for potential emergencies by identifying potential risks, developing strategies to mitigate them, and creating a communication plan to inform stakeholders and the public, while crisis management is the overall management of emergencies when they do occur.

Start-ups often face unique challenges due to their limited resources and rapid growth. Implementing effective crisis management and contingency plans in a Start-up is crucial for ensuring the resilience and survival of the business. Below are few of the steps that a Start-up can take and customise basis the business.

Effective crisis management and contingency planning are ongoing processes that require dedication and proactive efforts. By taking these few of many steps, Start-up will be better prepared to navigate unexpected challenges and emerge stronger from crises.

I. Identify Potential Crisis:

Start-ups can begin by conducting a thorough risk assessment to identify potential crisis that their business could face. All the financial, operational, reputational, and external factors are required to be considered in order to identify potential risks and related crisis. Seek feedback from the on-ground technical teams, relevant employees, board members, executives, investors, external professionals to gain insights and perspectives. Evaluate and analyse the crisis that may have being faced by competitors already to identify and know what exactly not to be done during crisis to minimise the damage.

II. Form a Crisis Management Team on Standby Mode:

Establish a cross-functional crisis management team comprising key stakeholders, including founders, key leaders and executives, legal counsels, public relations experts, and relevant department heads.

III. Develop a Crisis Communication Plan:

Create a crisis communication plan that outlines how the organisation will communicate with employees, customers, investors, and the public during a crisis, providing them with clarity as well as relief to the extent possible under relevant circumstances, thereby preventing the crisis from culminating into a larger problem. Develop key messages and templates for various communication channels, including press releases, social media, and internal communications.

IV. Trigger Points:

Identifying trigger points or specific events that would initiate the activation of crisis management plan of the organisation. This might include financial losses, data breaches, or legal actions depending on the nature of the business.

V. Create Contingency Plans:

Develop a contingency plan for each potential crisis scenario identified in the risk assessment, outlining the detail steps to be taken to mitigate the crisis and minimize its impact.

VI. Continuously Update and Revise:

Understand that the business environment is dynamic and hence the risks may change over time. Hence, crisis management and contingency plans needs to be reviewed and updated regularly for relevance.

VII. Legal and Compliance Considerations:

Ensure that Start-up complies with all relevant laws and regulations, as violations can lead to crisis which could have being avoided in 1st place. Have a legal advisor on standby for legal emergencies.

VIII. Financial Resilience:

Maintain a financial cushion or access to emergency funds to help navigate financial crises without endangering the core operations of the Start-up.

IX. Review and Learn:

After a crisis is resolved, conduct a thorough post-mortem analysis and take customer feedback to identify what worked well and what could be improved. Use these insights to refine your crisis management and contingency plans further.

Future of Governance in Start-ups

A. Start-up Governance Framework Model

A Start-up governance framework model outlines the principles, structures, and processes that guide how a Start-up is governed and managed. The governance framework is required to establish a culture of accountability, transparency, and ethical behaviour at all levels of Start-ups, thus enabling a self-regulating world class Start-up ecosystem in India.

While the specific governance framework can vary based on the Start-up's industry, size, and stage of development, it is a comprehensive guide that provides a clear and practical approach to establishing effective governance practices within a Start-up for the benefit of the Start-up and its founders.

The framework will help Start-up founders and entrepreneurs create a solid foundation for their businesses, by establishing structures and processes that will support their growth and success. The framework emphasizes the importance of transparency and accountability and provides guidance on how to establish effective communication channels between stakeholders, including board members, investors, and employees. It also highlights the need for Start-ups to establish a culture of compliance, by identifying and managing risks and complying with regulatory requirements.

The framework is based on extensive research and consultation with experts in the field and is designed to be flexible and scalable to accommodate the unique needs of each Start-up across various industries. It is intended to be a living document that can and will be updated and refined as business evolves and maturity level of Start-up.

In this Governance Framework[1], the Board of Directors being the key factor to good Corporate Governance must function well and be well informed. For this, it was recommended that the Board should have a core group of excellent, professionally acclaimed directors who understand their role of appreciating the issues put forward by the management and discharge their duties and responsibilities towards the company's shareholders as well as creditors. While at first a promoter director may not be well versed with duties and responsibilities as required under law, including best practices insofar as corporate governance is concerned, with the passage of time, experience and good counsel, this is a skillset that is quickly acquired.

1 Think Tank Recommendations on Corporate Governance for Indian Start-ups, available at: https://www.startup20india2023.org.

This Recommended Governance Framework is in the nature of guidelines and is suggested to be followed over and above all the relevant laws, as may be applicable for a start-up. Under the said Framework, if the board of a Start-up considers that some part of the Recommended Governance Framework is not appropriate to its particular circumstances, it is entitled not to adopt it. If it does so, however, it should consider and explain why it has not adopted the same – the ***"if not, why not"*** *approach.*

This approach ensures that all the relevant stakeholders receive an appropriate level of information about the entity's governance arrangements so that investors and other stakeholders can have a meaningful dialogue with the board and management on governance matters and can factor the information provided into their decision on whether or not to invest in the entity and how to vote on particular resolutions.

An "***if not, why not***" explanation a Start-up includes in its corporate governance statement setting out its reasons for not following a recommendation should:

- be reasonably detailed and informative so that the relevant stakeholders understand why it is that the said Start-up has chosen not to follow that recommendation; and
- disclose what, if any, alternative governance practices the Start-up may have adopted in lieu of those in the recommendation, and explain why those practices are considered more appropriate for the entity than the ones in the recommendation.

SN	Recommended Governance Framework[2]	Level 1 Inception to Early Stage	Level 2 Early Stage to Growth Stage	Level 3 Growth Stage to IPO
A	**Voluntary commitment to adoption of Governance Framework and Code of Conduct**	✓	✓	✓
B	**Policies / Agreements**			
1	Disclosure Policy	✓	✓	✓
2	Risk Management Policy* (Required under law)	✓	✓	✓
3	Budget Policies	✓	✓	✓
4	Non-disclosure agreements	✓	✓	✓
5	POSH Policy* (Required under law)	✓	✓	✓
6	Cyber Security Policy	✓	✓	✓

2 Think Tank Recommendations on Corporate Governance for Indian Start-ups, available at: https://www.startup20india2023.org.

SN	Recommended Governance Framework	Level 1 Inception to Early Stage	Level 2 Early Stage to Growth Stage	Level 3 Growth Stage to IPO
7	ESOP Policy	✓	✓	✓
8	Intellectual property rights as well as assignment/ licensing agreements	✓	✓	✓
9	HR Manuals / Employee Handbook	✓	✓	✓
10	Non-competition/non-solicitation agreements	✓	✓	✓
11	Diversity Policy		✓	✓
12	Whistle blower Policy		✓	✓
13	Code of conduct for directors, senior executives and employees		✓	✓
14	IT Policies including Data Governance and Information Security Policy		✓	✓
15	Customer Support / Grievance Policy		✓	✓
C	**Board Composition**			
16	Right combination of executive and non-executive directors based on skills matrix and business of the start-up		✓	✓
17	Diversity on board		✓	✓
18	Process for selection of board members		✓	✓
19	Written agreement setting out terms of their appointment	✓	✓	✓
20	Chair of the Board should not be same as the CEO			✓
21	Appointment of KMPs like CEO, CFO, COO and CS (as may be applicable).		✓	✓
22	Define role and responsibilities of Founder Directors		✓	✓
D	**Board Meeting Process**			
23	Sharing board reading material including notice and agenda ahead of board for member to be prepared (Required under law)	✓	✓	✓

SN	Recommended Governance Framework	Level 1 Inception to Early Stage	Level 2 Early Stage to Growth Stage	Level 3 Growth Stage to IPO
24	Documenting board minutes (Required under law)	✓	✓	✓
25	Recording board meeting electronically if possible		✓	✓
26	Board Meetings held at least once a quarter (Required under law)	✓	✓	✓
27	To oversee the Board of subsidiaries is properly structured and governed		✓	✓
28	To oversee the Board of acquired entities are properly structured and governed		✓	✓
E	**Directors / Board Responsibilities**			
29	Define Role and Responsibility Matrix of Board (including the following): ▪ Bank signatories ▪ Making investments ▪ Taking loans / debt ▪ Appointing auditors ▪ Approving related party transactions ▪ Approving large expenses beyond certain budget	✓	✓	✓
30	Articulate vision and mission statement of the Company and inculcate purpose as well		✓	✓
31	Board oversight of related-party transactions (Required under law)	✓	✓	✓
32	Defined Role of the Board Chair		✓	✓
33	Promoting good governance by framing a policy		✓	✓
34	Whether responsibilities are delegated to management		✓	✓
35	To have annual performance evaluation of board members and senior executives		✓	✓
36	Annual declaration and disclosures by directors (Required under law)	✓	✓	✓
F	**Committees**			
37	Remuneration Committee		✓	✓

SN	Recommended Governance Framework	Level 1 Inception to Early Stage	Level 2 Early Stage to Growth Stage	Level 3 Growth Stage to IPO
38	Audit Committee		✓	✓
39	Risk Committee		✓	✓
40	Whistle-blower Committee		✓	✓
41	Prevention of Sexual Harassment Committee (POSH) Committee (Required under law)	✓	✓	✓
G	**Remuneration**			
42	Remuneration for executive directors / founders	✓	✓	✓
43	Remuneration for non-executive directors		✓	✓
44	Disclosure of remuneration process and policy		✓	✓
45	ESOP for all management and preferably all employees		✓	✓
46	Remuneration for Key Managerial Persons		✓	✓
H	**Budget**			
47	Ensuring budgets are properly reviewed and approved by the Board	✓	✓	✓
I	**Financial / Business Integrity**			
48	Appointment of Audit committee		✓	✓
49	Defining responsibilities of auditors		✓	✓
50	Check Independence of Auditor			✓
51	Circulation of Quarterly Financial Statements		✓	✓
52	Internal audits		✓	✓
53	Annual audits (Required under law)	✓	✓	✓

SN	Recommended Governance Framework	Level 1 Inception to Early Stage	Level 2 Early Stage to Growth Stage	Level 3 Growth Stage to IPO
J	**Employees**			
54	Trainings on ethics, anti-harassment etc		✓	✓
55	Creating a mechanism for employees to raise issues to management safely and anonymously		✓	✓
56	Employment / Consultancy Agreement	✓	✓	✓
57	Founders Agreement	✓	✓	✓
K	**Managing ESG Risks and Opportunities**			
58	Board ESG oversight		✓	✓
59	ESG Disclosure			✓
60	Tax Practices			✓
61	Corporate Culture			✓
62	Workforce and human rights			✓
63	Climate Change			✓

B. Preparing for IPOs or Exit Strategies with Strong Governance

An exit strategy is a plan that a Start-up company develops to enable its founders and investors to realize their investment and exit the company. An exit strategy is typically designed to maximize the value of the company and generate a return on investment for its stakeholders.

The most common exit strategies for Start-ups include:

- Acquisitions
- Mergers
- Initial Public Offering (“**IPO**”)
- Management buyout
- Liquidation

Preparing for exit strategies with strong governance is essential for maximizing the value of Start-up and to ensure a smooth transition as it helps building investor confidence, ensures legal compliance, and enhances the overall attractiveness of Start-up company to potential buyers or investors.

Going public through an IPO is the most lucrative exit strategy and a transformative event for Start-ups as it provides access to capital and new growth opportunities however, going public is challenging as it needs to comply with stringent regulatory requirements, including financial reporting, disclosure, and governance standards. Also, preparing a Start-up to be IPO-ready is a complex and multi-year process. It requires meticulous planning, strong governance practices, and the right team of leaders and professionals to guide through the intricacies of the IPO journey.

Hence, by diligently preparing for exit strategies with strong governance since start of its journey, likelihood of a successful transition is high in less time and Start-up is well-positioned to achieve its objectives while maintaining ethical and responsible business practices and still remaining attractive to investors.

Taking cue from the Start-up framework model, some of the steps that the Start-ups may undertake for preparing itself can be as below:

- Develop a robust governance framework that includes clear roles and responsibilities for founders, executives, and the board of directors.
- Define decision-making processes and procedures, including mechanisms for resolving disputes.
- Ensure that the board of directors is composed of experienced individuals with a diverse range of skills and industry expertise, independence, and governance experience to provide valuable insights and impartial oversight.
- Clarify the roles and responsibilities of the board and establish various committees (e.g., audit, compensation) to enhance governance.
- Draw down or update the corporate governance policies and procedures, including codes of conduct, whistle-blower policies, anti-corruption measures and any other relevant policies and should ensure that the company follows all governance-related laws and regulations.
- Develop a robust system on financial review, reporting, internal controls and auditing to maintain transparency and accuracy, prevent fraud and errors and to report and undertake necessary correction steps wherever needed and on timely manner and proactively.
- Conduct thorough due diligence to identify any financial or operational weaknesses that may need to be addressed proactively.
- Conduct a thorough legal and regulatory compliance review to ensure that the Start-up complies with all relevant laws and industry regulations.
- Undertake the necessary actions to address any outstanding legal issues, such as litigation or intellectual property disputes.
- Review and update employee stock option plans (ESOPs) and equity incentive programs to align with the IPO or exit strategy and ensure that employees understand the potential impact on their equity holdings and are motivated to contribute to a successful exit.
- Develop a proper communication strategy with investors, employees, and other stakeholders for open and transparent interaction with respect to organisation plans which may have potential impact on them.
- assess the suitability of chosen exit strategy (IPO, acquisition, merger) based on market conditions and the company's growth trajectory and be flexible to adjusting the strategy as needed to maximize value and returns on investment.

C. Future of Start-ups

In recent years, the global Start-up ecosystem has been undergoing a profound transformation and they have proven their capability to become one of most significant and influential forces in the business world. They have disrupted industries, created entirely new markets and business models, and changed the way people think about entrepreneurship globally. As the Start-up landscape continues to evolve, it is increasingly important to anticipate and understand the future changes that shall be needed in terms of the governance practices, which will be shaped by these evolving trends and the unique challenges of each industry and market. It is evident that only those Start-ups who proactively embrace and adapt to these trends, will be better positioned to navigate the changing governance landscape and succeed in the long run by contributing to build a sustainable eco-system.

The landscape of Start-up governance is continuously evolving, driven by changes and advancement in technology, regulatory environments, investor expectations, shifting consumer behaviours market dynamics and global trends. To stay competitive, resilient and thrive in such environment, Start-ups must adapt to these shifts and anticipate future trends in governance. By having a clear vision, staying on top of new technologies, and remaining agile, Start-ups can ensure that they are ready for whatever lies ahead in the ever-evolving Start-up industry.

Below are few of the key aspects of the evolving landscape of Start-up governance to be considered in line with future trends:

I. Evolving landscape of future trends in Start-ups

- **Sustainability and ESG Focus**: Due to awareness on global crisis related to climate change, investors and consumers are showing a growing interest in sustainable and socially responsible businesses and products and services relevant for climate, change, healthcare, and poverty alleviation and other. Hence, it is be imperative for Start-ups to prioritize Environmental, Social, and Governance (ESG) principles in coming days soon, if not done yet.
- **Diversity and Inclusion**: Start-ups will need to prioritize diversity in inclusive leadership and decision-making roles to meet investor and societal expectations.
- **Clean Energy and Green Tech**: Start-ups will play a crucial role in developing clean energy solutions, sustainable materials, and technologies to combat climate change.
- **Cybersecurity and Privacy**: The increasing frequency of cyberattacks and data breaches has identified the need for robust cybersecurity solutions. Start-ups are exploring innovations in areas like zero-trust security, identity protection, and data privacy.
- **Tech-Driven Industries**: Technology will continue to be at the forefront of Start-ups. Emerging technologies such as artificial intelligence (AI) and machine learning, blockchain, quantum computing, edge computing will create new opportunities for innovation and will continue to transform industries. The Web3 movement envisions a decentralized internet with new opportunities for Start-ups in areas like decentralized applications (dApps), blockchain infrastructure, and decentralized identity.
- **NFTs and Digital Ownership**: Non-fungible tokens (NFTs) are revolutionizing digital ownership and the art market. Start-ups are exploring NFT applications beyond art, including gaming, collectibles, and virtual real estate.

- **Food Innovation and Agriculture Technology**[3] **(AgriTech)**: As global food demands rise, Start-ups will focus on AgriTech innovations solutions, including precision agriculture, Indoor vertical farming, sustainable food production, Bee Vectoring, Livestock Farming Technology, Farm automation and Management Software, water management technology etc.

- **Education Technology (EdTech)**: EdTech Start-ups will continue to provide online learning solutions, personalized education and upskilling opportunities as remote and hybrid learning becomes more common and accessible.

- **Fintech Innovation**: The financial technology sector will see continued growth, with Start-ups focusing on digital banking, decentralized finance (DeFi), and payment solutions powered by blockchain and cryptocurrencies are disrupting traditional financial services.

- **HealthTech and Biotech**: The pandemic accelerated the adoption of telehealth and digital health solutions. The healthcare and biotechnology sectors will experience significant growth as Start-ups focus on telemedicine, remote patient monitoring, personalized medicine, genomics, digital health solutions and AI-driven diagnostics.

- **E-commerce Evolution**: E-commerce will continue to evolve with advancements in augmented reality (AR), virtual reality (VR), and 3D modeling, offering immersive online shopping experiences.

- **Metaverse and Virtual Reality (VR)**: The metaverse, a virtual shared space where users can interact and create, is gaining traction. Start-ups are exploring opportunities in virtual reality, augmented reality, and mixed reality, particularly in gaming, entertainment, and remote collaboration.

- **Supply Chain Resilience**: Recent disruptions in supply chains on account of pandemic, have highlighted the need for increased resilience. Start-ups are innovating in logistics, supply chain management, and predictive analytics to enhance supply chain robustness.

- **Space Exploration and Commercialization**: Start-ups are contributing to the commercial space industry's growth with opportunities in satellite technology, asteroid mining, lunar exploration, and even Mars colonization.

II. Evolving Landscape of Future Governance in Start-ups

- **Increased Regulatory Scrutiny**: In order to guide and shape the future of Start-ups, Governments have a unique opportunity to provide the necessary support and dedicated regulations that will help to ensure the success of Start-ups and enable them to reach their potential without stifling innovations within the Start-up ecosystem.

  Start-ups should expect tighter regulations around employee well-being, data privacy, cybersecurity, antitrust concerns, compliance, risk and governance management and governance models that prioritize stakeholder interests inclusive of employee, customers and communities in a holistic manner.

3 https://masschallenge.org/articles/agriculture-innovation.

- **Future Governance Models should be digitally transformed, progressive and adaptive in nature**: Future governance models shall need to be more progressive and adaptive to rapid changes in technology and market conditions. Agile governance frameworks that can respond quickly to emerging challenges will be valuable.

  The use of technology for governance is increasing. Digital tools like board management software and AI-driven governance platforms using blockchain technology are streamlining governance processes and enhancing transparency. Further, the shift toward remote work and virtual meetings may include a more permanent acceptance of virtual governance.

- **Cybersecurity, Data Ethics and AI Governance**: Cybersecurity threats continue to evolve and greater emphasis must be placed on data protection, and cybersecurity governance to safeguard sensitive information and maintain customer trust. As Start-ups leverage AI and data-driven technologies, ethical considerations and AI governance will become central to decision-making and risk management. Decentralized governance models using blockchain technology are emerging, allowing stakeholders to participate in decision-making.

- **ESG Focus with Long-Term Sustainability**: ESG considerations are becoming integral to governance. Investors and stakeholders increasingly expect Start-ups to address environmental and social issues, along with maintaining sound governance practices. Governance practices will need to align with sustainability and ESG goals.

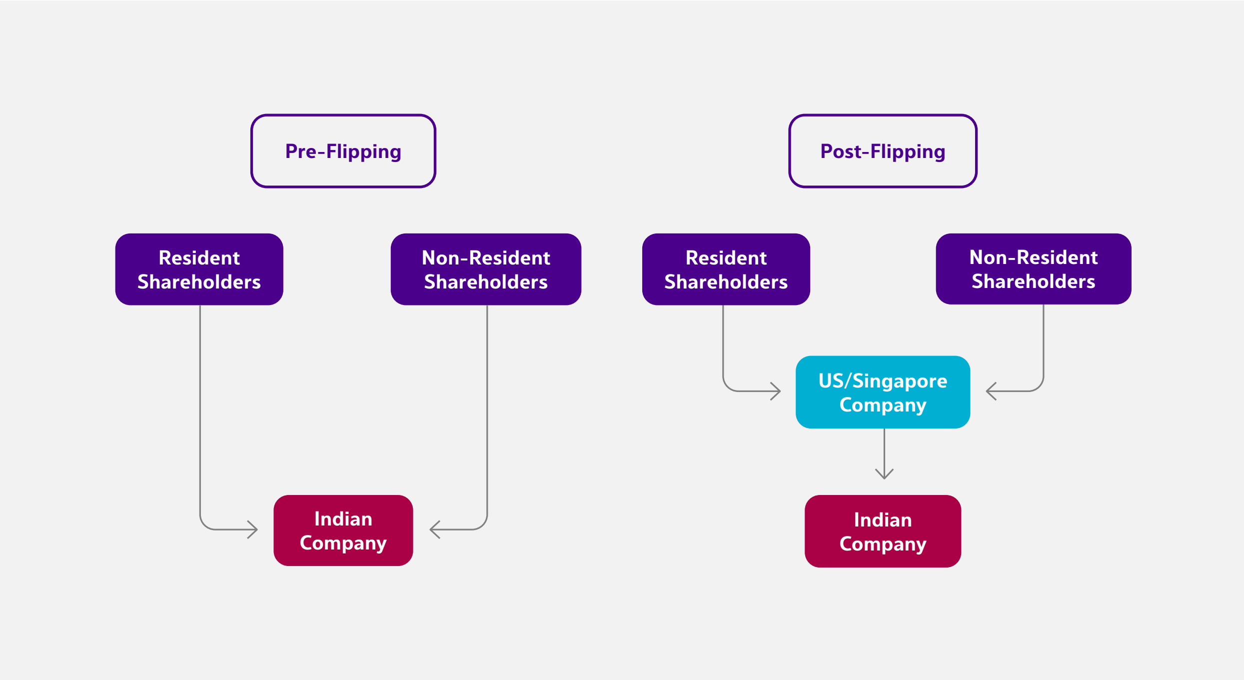
- **Globalization Challenges**: Start-ups with global ambitions will face complex governance challenges related to differing regulations, separate jurisdictions, cultural norms, and geo-political issues.

D. Internalization – Reverse Flipping

'Flipping' refers to the process of transferring the entire ownership of an Indian entity to an entity incorporated abroad, along with a transfer of the key assets such as intellectual property. The resultant structure is an Indian company becoming a wholly owned subsidiary of a foreign company, with the day-to-day operations being conducted in India. Effectively, the ownership of the entity is externalised abroad, whereas the value of such entity may continue to vest with the Indian entity.[4]

While flipping is generally considered to be easier at the initial stages of the life cycle of an entity, mature structures have also flipped out of India in the last few years for a myriad of reasons. A predominant reason for flipping has generally been the access to a global pool of investors, ease of listing on overseas exchanges, higher valuations in stock exchanges abroad, broader customer base in new geographies, relatively easier regulatory regimes, founder preferences and taxation benefits accruing to interested international investors in their host jurisdictions. Estimates suggest that 56% of 108 Indian Unicorn Start-ups are domiciled in offshore jurisdictions. United States of America, Singapore and United Kingdom are some of the most popular examples of countries to which Indian entities have 'flipped'.

4 NDA Hotline on Reverse Flipping: Time To 'Internalise' Into India Inc!, available on: https://www.nishithdesai.com/NewsDetails/9600.



Source: Indian Economic Survey 2022-23

However, there is a marked rise in 'reverse flipping' into India recently. As the name suggests, reverse flipping refers to the process of internalising through an integration of ownership and value of an entity back into India. Thus, the shares of the foreign and Indian shareholders (that were originally held at the foreign holding company level) are swapped for shares of the Indian company, pursuant to which the foreign companies / offshore holdings are dissolved or merged into the Indian entity and all the shareholders at the offshore level own the shares of the Indian entity. While this may have a few adverse implications (including tax implications) on the investors, the general motivation for a reverse flip is the increased certainty of an exit at a higher valuation in India

The Economic Survey 2022-23[5] has observed that there is a conducive environment for an increase in internalisation into India due to various initiatives, reforms and schemes targeted towards Start-ups by the Government of India, greater access to capital within the prevalent private equity and venture capital setup, the growing maturity of Indian markets, and the recent changes in rules regarding round-tripping.

With various reforms and the recent liberalization of regulations, the Government of India has not only enhanced the ease of doing business in India but has also reinstituted the lost faith of foreign institutional investors in India. In addition, the Indian Government has taken steps for attracting companies to bring ownership back to India including tax incentives offered in GIFT city and initiatives to provide a more tax friendly environment to investors such as proposed exemption from angel tax for certain non-resident investors and Start-ups alongwith host of other incentives to encourage reverse flipping of offshore holding company /Indian Start-ups into GIFT IFSC and for that matter even to encourage greenfield investments in holding companies to be setup directly into GIFT IFSC.

5 Box XI.5: 'Flipping and Reverse Flipping: the recent developments in Start-ups", Economic Survey 2022-23 (Government of India), available at: https://www.indiabudget.gov.in/economicsurvey.

An important factor contributing to this trend also is the changing attitude of founders and the management, who have begun acknowledging the value created, increased investment interest, brand relationships fostered and strength of the customer base in India and its direct proportionality to attractiveness through a near-future exit by way of an IPO.

While reverse flipping remains work in progress, established companies such as PhonePe and Pepperfry have recently internalised into India — which only demonstrates the increasing popularity of resorting to the process of internalisation.

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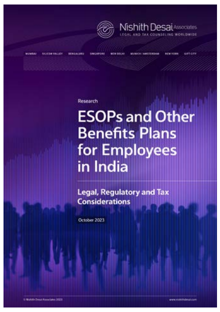

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