

# Startups: A Compliance & Secretarial Perspective

The word 'Startup' is often read and heard these days in the wake of technological advancement and business development. Globally, the stage has been set for such startups and businesses by large fund houses and other High Net-worth individuals. In the Indian context, there are plethora of startups which are making headlines with their innovative products and business plans. It so happens that the founders of the Startups are generally from technical or software background, who are more into product or service development and do not have much awareness about the financial and compliance aspects involved. It is in this background, that professionals like Company Secretaries can contribute immensely right from incorporating the Company to assisting the founding team with setting up appropriate processes and procedures. Company Secretaries can provide all round services, necessary for these startups and also prepare them for a larger goal of acquisition by an established entity by way of due diligence. This article encapsulates the legal and regulatory requirements for startups in India and the role which professionals, particularly preferred professionals like Company Secretaries, can play in their growth and expansion.



**Abhinav Kumar K P, ACS**

Hyderabad

[abhinavkumarkp@gmail.com](mailto:abhinavkumarkp@gmail.com)



**Ranjith Krishnan**

Industry Liaison Officer

National Institute of Securities Markets

Patalganga

[ilo@nism.ac.in](mailto:ilo@nism.ac.in)

## INTRODUCTION

In the present era of technological development and thinning of global barriers, 'startups' have become an instrument for driving economies. Over the last few years, we often read about startups and unicorns getting millions of dollars of funding. Not to forget, the ease of living ideas which these startups have come up with, be it food, travel or commuting, any convenience which was never thought of in the past, is a reality now, thanks to the innovative ideas which many startups have come up with.

With the kind of never seen earlier innovations, technocrats are using the technology to the optimum and coming up with various kinds of products, services, and solutions. From a business perspective, there are many individuals and institutions who believe in these ideas and invest by way of funding. The founders of startups are typically first-generation businessmen who are more into their craft and have less or no idea of corporate operations and compliances. It is in this background, that Company Secretaries as trusted mentors or advisors and compliance/governance professionals rolled into one can play a much greater role in the graduation of these startups to the next levels. With the increase in the number of startups, there is an increased requirement of professionals like Company Secretaries who are preferred professionals, integral for managing the growth of startups and their governance and compliance requirements.

## THE INDIAN STARTUP SAGA

Home to over 55,000 startups, India, as a country with the second-largest startup ecosystem in the world has attracted investments up to about US\$ 70 billion in the past half-decade. The total funding into startups is expected to cross \$150 billion in 2025 with their total value transcending \$500 billion. With a few dozen companies, the ecosystem has grown to thousands, the birth of which has reinforced the position of India as a significant player in the world startup ecosystem. The Indian startup ecosystem has grown spectacularly during the past 10 years. Further, according to a report by National Association of Software and Services Companies (NASSCOM) in October 2015, India among the global startup ecosystems ranks third behind only the US and the UK. The ecosystem has received sturdy and constant investment throughout, with venture capital growing 8 times between 2014 and 2019. The investment enthusiasm remained strong even during Covid19 when the startup deals came closer to the historic peak of 2017.

## THE REGULATORY SCENARIO

The startup ecosystem thrives in any economy due to its business and regulatory support. The government's support and policies also provide impetus to the growth of startups in a country. As a part of this initiative, the Indian Government announced "Startup; Stand up India", to enable startups

and encourage entrepreneurship in India, thereby leading to creation of employment opportunities in the nation. Quite a few startups with online businesses like Flipkart, Amazon, Myntra, Snapdeal, etc. are now some of the most valuable and successful businesses in India on account of such initiatives.

## CONTEMPORARY SCENARIO

Some of the often heard terms in Indian businesses these days are Startup, Entrepreneurship, seed fund, etc. This has resulted in lot of youth being motivated towards the entrepreneurial journey and setting up of business. This is a wave of change across the country, wherein people across ages and locations including rural areas are exploring their entrepreneurship dreams. Startup India has been fundamental for this positive spur of change. This landmark initiative has enabled the youth to nurture their innovation and fulfil their dreams of building a Startup.

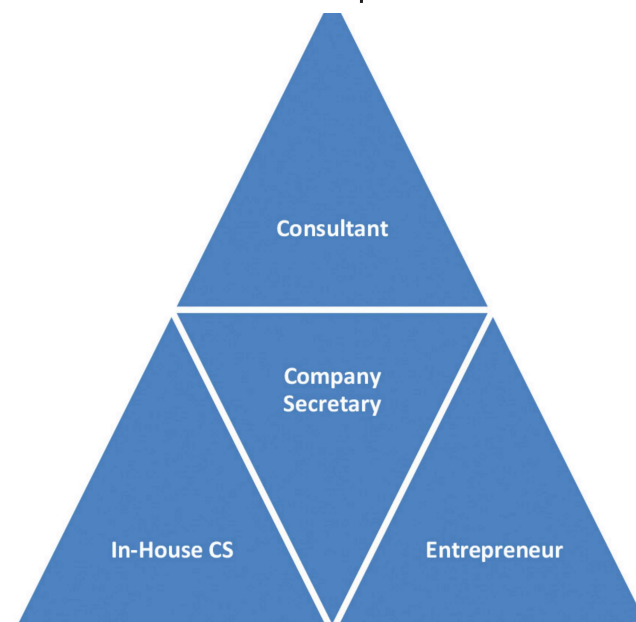
## KEY SECRETARIAL AND LEGAL ASPECTS IN A STARTUP

- **Founder's Agreement:** From an administrative perspective a founder agreement is the cornerstone for the structuring of any startup. In situations where there are multiple founders, a founders' agreement sets the tone as it defines the working relationship and ownership as well. It also helps in outlining the communication and conflict resolution aspects which are essential for any startup structure. It also prevents any conflicts in the future and to avoid any dispute among the founding parties of a startup, all co-founders should sign a comprehensive operating agreement.
- **Shareholder's Agreement :** As the startup grows and gets funding from private investments by individuals or angel investors or any other institution, the shareholders' agreement would be necessary from a financial structure perspective. It is one of the most important documents that helps to determine the rights and liabilities of these shareholders and their ability to exercise these rights. These agreements are very critical for the investors and the founders as it contains various covenants which are important in case any co-founder decides to leave the startup.
- **Drafting of Non-Disclosure Agreement (NDA):** Generally, startups are driven by an innovative idea, and many times it contains a secret ingredient in its product or service which is a significant separator from competitors. In such cases, the USP of the startup lies in the secret sauce, which if shared with others may lead to the startup's idea being copied or have competition from others in similar domain. Most of the times, it is this aspect, which attracts investment and funding from angel investors. NDA is the first set of documents which is preliminary before reaching out to any outside party i.e., investor or client. It protects the privacy of the entity and the other party as well. NDA is not just restricted to potential clients, but also to ensure that the employees do not share the ideas elsewhere. Drafting of the NDA is an important process and the services of a Company Secretary is preferred by the Startups before the agreements are inked.

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- **Other Agreements and Contracts:** For any business, including startups for its day-to-day activities, a contract is necessary to provide services or avail services from vendors. It is essential that the language and terms of these contracts are weighed in appropriately before they are executed.
- **Drafting of Policies and Procedures:** For businesses, presence online and developing a business is quite essential for marketing of their products and services. Incidental to these activities is setting up of websites including Disclaimer Policies, Terms of Use, Cookie Policies, Cancellation / Refund, and Privacy Policies, varying from business to business. The language used in such policies is required to be carefully drafted to ensure that the organization is protected from requisite angles.
- **Intellectual Property:** Typically, for a startup, its product or service and the differentiation is key factor for its success, which is a creation of the human intellect. Intellectual property is vital in the brand building and valuation of a startup. Intellectual Property includes Trademark, Patents, Copyrights, and Designs. Startups need technical support in drafting and filing of applications, replying to authorities, filing of opposition notice to give reply to opposition notice, which happens to be forte of a Company Secretary.
- **Other Compliances:** In addition to the above contractual and operational aspects, the startups need to take care of other compliances like timely filings, holding of board meetings, shareholders meetings, etc. This is essential for the entity, to be compliant with the applicable laws and regulations, and to avoid any non-compliance and penalties thereof. As a compliance officer or consultant, the Company Secretary takes care of these compliances.

### Overview of CS's role in startups



Source: Conceptualised by the authors

## IN-HOUSE COMPANY SECRETARIES

Startup companies, depending on their size and nature, may appoint full-time Company Secretaries to help them in compliance and other functions. The key duties of Company Secretaries include:

- Ensuring compliance with applicable laws and regulations to the startup.
- Timely review of the statutory and regulatory changes impacting the entity's operations and ensuring that the Directors are informed of the actions to be taken
- Ensuring Board Procedures are effective and all the necessary documentation is maintained appropriately.
- To be a trusted advisor and primary contact to the Board/Promoters for advice/guidance for the board and to assist their decision-making process.
- To maintain the minutes and records and to maintain the statutory registers as required by the law.
- To carry out all the procedures related to the allotment, transfer and transmission, or buy back of shares, where applicable of the Startup and other procedures in respect to applicable law.
- To guide the Directors about their responsibilities and duties.

## ROLE OF CONSULTANT IN STARTUP

The Practising Company Secretaries, as a consultant to startups, provide various services including:

- **Incorporation Services:** A Practising Company Secretary can guide the founders in incorporating the Company with articles and objectives in line with their business requirements. If the business so necessitates, the Company Secretary can also advice about different kind of business constitution like companies, Limited Liability Partnerships, etc.
- **Secretarial Services:** A Company Secretary in Practice is known for the secretarial services and is an expert in providing such services like; change in directors, change in registered office address, change in business objects of the company, issuance of shares, closure of company, etc. With these niche skill Practising Company Secretary, is the go-to person for all the secretarial aspects for any startups.
- **Drafting of Documents:** As a consultant, the Practising Company Secretaries can help in drafting of various agreements including shareholders agreements, contracts, deeds, required from time to time. A Startup for day-to-day business activities forms various business associations for which a valid contract and agreements are necessary with the legal terminology and specifics varying for each contract. A Practising Company Secretary is very well versed in the art of drafting and is usually engaged by the Startups for settling the draft of the agreement as per the needs of the parties to contract.

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- **Managing Statutory and Other Books:** Preparation and maintenance of statutory books is required under the Companies Act, 2013 and the rules made thereunder. Many times, owing to their size of operation and the nature of activity, Startups and other small entities prefer to outsource the tasks of maintaining the statutory registers to a Practising Company Secretary's firm, as it saves the time of the entrepreneurs, making them free to concentrate on business requirements.
- **Book Keeping:** Maintenance of books of accounts is a cumbersome task and needs skilled professionals. Usually, for small companies this is more so an additional burden from a cost perspective like having a full-time accountant, etc. Some Practising Company Secretaries also provide book-keeping services and by virtue of their connect and network, can be trusted to provide references suitable to the Startups.
- **Taxation Services:** From a tax perspective, there are many activities which require professional assistance from filing of returns (income-tax, GST), preparation of documentation for appeals, supporting audits, and any other informational needs. As a consultant, Practising Company Secretary can also provide such taxation services.
- **Intellectual Property And Other Representations:** A Practising Company Secretary can file the application for various intellectual property registrations. In case of appearing before the officers for hearing, serving and replying to opposition notices, appear before the Intellectual property appellate board. Further, the Practising Company Secretary can also act as a constituted attorney of the entity and represent the Company/Startup before various statutory and regulatory authorities.
- **Registrations and Licensing Services:** Apart from legal, corporate law, taxation and accountancy services, a Practising Company Secretary's firm also performs registration and licensing services like registering the business with food safety authority, organic certification authority, local licenses from municipality, drug license, Real estate license, Import Export Code (IEC), government e-marketplace registration and many other licenses and registrations.



- **Due Diligence:** More often we get to read many startups being acquired by seasoned players and well-established firms. In a way, one of the goals for a few founders is to ideate a business and sell it off to a big player, thereby making big money in the transaction. Large organisations or well-established corporates look for good governance practices and internal controls in startups before they buy such businesses. Company Secretaries can help the startups in developing better governance practices and help in the due diligence, thereby preparing the startups for take overs.
- **Other Services:** A Company Secretary also can provide many other services like drafting of project reports for loan allotment, managing payroll of the company, managing various policies, guiding on investments, arranging and conducting meetings with potential investors and businesses, etc.

## ROLE AS AN ENTREPRENEUR

Entrepreneurship is a journey of people with innovative ideas and vision to achieve specific objectives through business. An entrepreneur, colloquially is understood to be an innovator and differentiator through a source of new products, services and businesses.

Entrepreneurs play a key role especially in a nation like India, which is on the verge of becoming a \$ 5 billion economy. Using the skills and initiative necessary to anticipate needs and bring new & innovative ideas to domestic as well as Global market. Entrepreneurs who prove to be successful in taking on the risks of a startup are rewarded with profits,

and continued growth opportunities. Even the digital and television media is propagating the entrepreneurship in India at grass root level and TV shows like Shark Tank demonstrate the same.

A Company Secretary, who has qualities of an Entrepreneur has an edge over the others, being himself a trained Governance Professional and knows how to mould the strategies in line with the emerging governance framework.

### Other Avenues:

**Cooperative Societies:** In cooperative societies and other such institutions, there is always a scope for establishing a professional and documented procedure for day-to-day operations and management oversight. Company Secretaries from a compliance perspective and also in their supportive profile to the Management, have a key role to play in cooperative societies.

**Sports Laws:** Presently, there are no specific laws in India dealing with sports related aspects. Sports feature in the concurrent list of the Indian Constitution, and therefore, both the union and state legislatures can formulate laws relating to sports. Certain Indian states such as Kerala, Rajasthan, Himachal Pradesh, etc., have made efforts to formulate their state-specific sports law to promote sports and games and to enhance the athletic efficiency in the State and to extend and promote the concept of "Sports for all" at all levels. In the absence of any specific law, various regulations govern the sports related activities in India for amateur sports, professional sports and international sports, such as contract law, employment, tax, competition law, privacy law and defamation

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laws, etc. As a compliance and legal professionals, Company Secretaries can contribute to this area, which is an untapped territory. This is more so in the areas of different sports leagues like football leagues, Kabaddi leagues, etc., which are still in nascent stages and may require regulatory support.

**Global opportunities:** Many Company Secretaries are currently employed in countries such as the United States, Canada, the United Kingdom, Singapore, Malaysia, Thailand, Australia, New Zealand, the Middle East, and Africa. Company Secretaries are known for their research, legal bent of mind, analytical skills and managerial capabilities in addition to compliance management. These skills make Company Secretaries apt for the global roles as well. Following the globalisation of services through the WTO and GATS, opportunities for Practising Company Secretaries are emerging in several nations. India has signed bilateral Comprehensive Economic Cooperation Agreements with Singapore, Malaysia, Thailand, and Mauritius, among others.

### Personal Skills:



**Source:** Conceptualised by the authors

In addition to technical skills, the professionals are expected to have additional traits which differentiate them from others. These skills are their individual trade mark which the professional leaves with the clients and potential customers. Such skills are mostly people oriented but also include personal skillsets like:

**Problem Solving:** Any client, a small business or a successful entrepreneur expects solutions for the operational or compliance issues. The professionals shall establish themselves as problem solvers within the legal ambit and provide the clients with the most efficient solution to ensure compliance whilst ensuring compliance with law in spirit.

**Discipline:** The individuals are focused on making their businesses work, and eliminate any hindrances or distractions to their goals. They have overarching strategies and outline the tactics to accomplish them. Successful entrepreneurs are disciplined enough to take steps every day towards the achievement of their objectives.

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**Confidence:** The entrepreneurs are confident with the knowledge that they will make their businesses succeed and they expect the same from the professionals they work with. They exude that confidence in everything they do. Same is in the case of a Company Secretary. As a professional, confidence is the key trait for representation before any authority or rather even to advise any client.

**People skills:** The entrepreneur has strong communication skills to sell the product and motivate employees. Most successful entrepreneurs know how to motivate their employees so the business grows overall. They are very good at highlighting the benefits of any situation and coaching others to their success.

**Strong work ethos:** A successful person is the one with strong work ethics and he expects the same from others. As a governance professional it is all the more relevant that the work ethic is imbibed and is part of the professional's service offerings. A Company Secretary is taught from the very beginning the meaning of ethics and to practice in its profession as well. Hence, for us as professionals it is ingrained from the very initial stages of the professional education.

## CONCLUSION

There is no doubt that the Company Secretaries can make great contribution to startups from the teething stages and beyond, thereby be part of the startups journey. As a trend, once the idea of the startup hits off, it is either acquired by a large player or the cofounders, sell their stake to others to pursue other ideas. In any event, be it for incorporation or takeover by a larger corporate, Company Secretaries have a greater role to play in the statutory, legal and regulatory prism of startups.

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