

Professional Opportunities in Economic and Commercial Laws



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Types of Law

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- Corporations and Partnerships
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- Cyber Law
- Energy Law
- Environmental Law
- Family and Succession Law
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Types of Law

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International Law

- International law is the term commonly used for referring to laws that govern the conduct of independent nations in their relationships with one another.
- The two traditional branches of the field are:
jus gentium — law of nations
jus inter gentes — agreements among nations
- International Law unlike domestic legal systems is “decentralized” in that it has no central legislator creating its rules.
- The creators of International Law are at the same time the main subjects of international law, namely states.

International Law

- States as subjects of international law, unlike individuals in domestic law, do not elect an ‘international legislator’ which is then mandated to make law on their behalf. Moreover States as creators of law are complete equals.
- International law is a law of co-operation, not subordination. Its creation depends essentially on the consent of states, be it explicit or only implicit.

Intergovernmental Organisations

- An international organization is an organization with an international membership, scope, or presence.
- There are two main types:
 1. International nongovernmental organizations - non-governmental organizations (NGOs) that operate internationally. These may be either:
 - a. International non-profit organizations. Eg. International Committee of the Red Cross
 - b. International corporations, referred to as multinational corporations. Eg. The Coca-Cola Company
 2. Intergovernmental organizations – they are made up primarily of sovereign states (referred to as member states). Notable examples include the United Nations (UN), and World Trade Organization (WTO).

Intergovernmental Organisations

- The world is getting smaller and increasingly interdependent every day.
- States want to preserve their independence but they are confronted with a growing list of problems, which they can only solve in cooperation with others. This calls for an institutional framework to give that co-operation a more permanent structure.
- Hence, decisions taken at the national level and results of intergovernmental co-operation have become closely intertwined.

Related Websites

- Asia-Pacific Economic Cooperation (APEC) Competition Policy Database
<http://www.apecsec.org.sg/loadall.htm?http://www.apecsec.org.sg/committee/competition.html>
- International Chamber of Commerce -
<http://www.iccwbo.org/>
- International Trade Centre UNCTAD/WTO-
<http://www.intracen.org/>

Related Websites

- International Monetary Fund (IMF) - <http://www.imf.org/>
- North Atlantic Treaty Organisation (NATO) <http://www.nato.int/>
- OECD. Organisation For Economic Co-operation And Development, Competition Law And Policy - <http://www.oecd.org/daf/clp>
- Organisation Of American States (OAS) Trade Unit -<http://www.oas.org/>
- Trade and Development Centre - <http://www.itd.org/>

Related Websites

- United Nation Conference on Trade and Development (UNCTAD)
<http://www.unctad.org/competition>
- United Nations Commission on International Trade Law (UNCITRAL) <http://www.uncitral.org/>
- United Nations Industrial Development Organization (UNIDO)- <http://www.unido.org/>
- World Trade Organization (WTO)-
<http://www.wto.org/>
- World Intellectual Property Organisation -
<http://www.wipo.org/index.html.en>

Economic and Commercial Laws

- Commercial law (business law) constitutes all the law which applies to the rights, relations and conduct of persons and businesses engaged in commerce, merchandising, trade, and sales. Many countries have adopted civil codes which contain comprehensive statements of their commercial law.
- Economic law encompasses a wide spectrum of subjects including trade in goods and services, financial law, economic integration, development law, business regulation and intellectual property.

Competition Laws

- Competition law refers to laws enacted by governments to regulate competitive markets for goods and services, leading up to the modern competition or antitrust laws around the world today.
- The two largest and most influential systems of competition regulation globally are United States antitrust law and European Community competition law.
- India's competition law is contained in the Competition Act 2002. The Competition Act 2002, received assent of the President of India, on 13th January 2003 and was published in the gazette of India on 14th January 2003.
- Some of the sections of the Act were brought into force on March 31st, 2003, and majority of the other sections on June 19th, 2003.

Competition Laws

- The Act has extra territorial reach (i.e., effects doctrine)
 - [Section 32]
- 'Time' is the essence of the Act [Sec. 20, 21 & 49]
- Protects interest of 'Business' consumer [Sec 2(f) & (l)]
- Calibrated introduction of the Act
- The Act has essentially four principal elements:
 - # Anti - Competition Agreements (it seeks to prevent anti-competitive agreements)
 - # Abuse of Dominance (the Act seeks to prohibit abuse of dominant position by enterprise)

Competition Laws

- Combinations Regulation (regulate combinations exceeding threshold limits in terms of prescribed turnover or assets)
- Competition Advocacy (the Act also makes it incumbent on CCI to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues)
- The Central Government has appointed the Chairman and Members of the Competition Commission of India set up under the Act

Competition Laws

- The Central Government has notified w.e.f. 20th May, 2009, the provisions of the Competition Act, 2002 relating to anti-competitive agreements (section 3) and abuse of dominant position (section 4) along with other related and miscellaneous provisions
- The Central Government has notified w.e.f. 20th May, 2009, the establishment of Competition Appellate Tribunal

Professional Opportunities in Competition Laws

- Advisory and Consultancy Services to enterprises
- Drafting of anti-competitive agreements
- Compliance of competition law audit
- To work as Expert for Commission under Section 17
- To appear before Commission under section 35
- To appear before Competition Appellate Tribunal 53S Chapter VIIIA(Section 53A to 53U)

Related Websites

- Competition Commission of India:
<http://www.cci.gov.in/>
- WTO :<http://www.wto.org/>
- Director General of Investigation and Research:
<http://www.mca.gov.in/MinistryWebsite/dca/mcaoffices/dgir.html>
- UNCTAD : <http://www.unctad.org/>
- OECD: <http://www.oecd.org>
- International Competition Policy Advisory Committee (ICPAC):
<http://www.usdoj.gov/atr/icpac/icpac.htm>

Anti Money Laundering Laws

- Money laundering involves disguising financial assets so that they can be used without detection of the illegal activity that produced them.
- The Prevention of Money Laundering Act, 2002 (PMLA 2002) is the primary anti money laundering legislation in India.
- The Prevention of Money Laundering Act, 2002 (PMLA 2002) and the Rules notified there under came into force with effect from July 1, 2005.
- The PMLA 2002 consists of ten chapters containing 75 sections and one Schedule.

Anti Money Laundering Laws

- Financial Intelligence Unit - India (FIU-IND) is the central, national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions to enforcement agencies and foreign FIUs.
- The Director, FIU-IND and Director (Enforcement) have been conferred with exclusive and concurrent powers under relevant sections of the Act to implement the provisions of the Act.

Anti Money Laundering Laws

- Recently the Prevention of Money Laundering (Amendment) Act, 2009 (21 of 2009) has amended the PMLA and the amendment has come into force with effect from June 1, 2009.
- The PML (Amendment) Act, 2009 was notified in the Official Gazette on 12th November, 2009.
- The amendment, inter alia, has brought authorized persons within the definition of "Financial Institutions" under Section 2(I) of the Act.
- Also the amendment has brought the non profit organisations under the purview of the PMLA 2002.

Professional Opportunities in Anti Money Laundering Laws

- As a consultant providing
 1. his vast expertise in handling huge quantitative data for verification of the exact nature of transactions.
 2. Building effective AML programs for the financial organisations to protect them from the potential threats.
 3. Evaluating AML software
- As the trusted partner of the government,
 1. ensuring implementation of the Act in letter and spirit.
 2. KYC AUDIT

Professional Opportunities in Anti Money Laundering Laws

- KYC audit
 1. Customers due diligence procedures to confirm identity of Client from the records produced by him.
 2. Systems audit for checking Identity from external database.
 3. formulating and implementing the programme of KYC which is to be forwarded to Director in PMLA
- Risk Advisory services (RAS), identifying the risk & its mitigating controls in the systems for proper internal control environment.
- Management Advisory service (MAS), creating proper administrative and organisation structure to ensure the loop free information flows.

Professional Opportunities in Anti Money Laundering Laws

- Assistance in Maintenance of records
- Internal audit.
- Authorized representation - A person preferring an appeal to the Appellate Tribunal may use the assistance of an authorized representative (as defined in S 288(2) of the Income Tax Act, 1961) to present his case before the Appellate Tribunal. (Section 39(1) of the Prevention of Money-laundering Act, 2002)
- Member to Appellate Tribunal - A practicing Chartered Accountant can become a member of 'Appellate Tribunal', which hears appeals against the orders of the Adjudicating Authority and authorities. (Section 28(2) of the Prevention of Money-laundering Act, 2002)

Related Websites

- Financial Intelligence Unit, India:
<http://fiuindia.gov.in/index.htm>
- Ministry of Finance:
<http://www.finmin.nic.in/>
- Insurance Regulatory and Development Authority:
<http://www.irdaindia.org/>
- Reserve Bank of India
<http://www.rbi.org.in/home.aspx>
- Securities and Exchange Board of India
<http://www.sebi.gov.in/>
- Central Bureau of Investigation
<http://cbi.nic.in/>

Laws relating to Micro, Small and Medium Enterprises (MSMEs)

- In India, the MSMEs play a pivotal role in the overall industrial economy of the country. The major advantage of the sector is its employment potential at low capital cost.
- The MSME sector falls under the jurisdiction of the Ministry of Micro, Small and Medium Enterprises (Sukshma Laghu Aur Madhyam Udyam Mantralaya), of the Government of India.
- The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 is the main legislation governing MSMEs in India. The came into force from 2nd Oct, 2006.

Laws relating to Micro, Small and Medium Enterprises (MSMEs)

- The MSMED Act, 2006 provides for facilitating the promotion and development and enhancing the competitiveness of Micro, Small and Medium Enterprises and for matters connected therewith.
- Under the MSMED Act, 2006, a National Board for Micro, Small and Medium Enterprises has been established.

Professional Opportunities in MSMEs

- Counseling of MSMEs for the rights and benefits available to them
- Advisory role in formation, Registration, taxation and foreign direct investment
- Assistance in compliance with the technicalities laid down by the MSMED Act 2006 itself like:
 - Classification of industries
 - Registration under the Act
 - Procedure of Filing of Entrepreneurs Memorandum
 - Disclosure Requirement

Professional Opportunities in MSMEs

- MSMEs even though small in size, are an enterprise, and a huge list of laws of the country become applicable to them. The entrepreneurs may not necessarily have such technical knowledge and expertise to comply with the innumerable requirements expected of the MSMEs. The Chartered Accountants being aptly equipped with their varied knowledge are the ideal person to assist the MSMEs in this respect
- Assistance in obtaining several clearances or permissions depending upon the nature of unit and products manufactured.

Related Websites

- Ministry of Micro, Small and Medium Enterprises
<http://msme.gov.in/>
- Development Commissioner, Ministry of Micro, Small and Medium Enterprises: <http://dcmsme.gov.in/>
- Ntework of small and medium enterprises
<http://www.smenetwork.net/>
- Federation of Indian micro and small & medium enterprises: <http://www.fisme.org.in/>
- <http://www.laghu-udyog.com>
- SME Rating Agency of India Limited
<http://www.smera.in/> - rating agency
- National manufacturing competitiveness council
<http://www.nmcc.nic.in/> -

Intellectual Property Rights (IPRs) Laws

- Intellectual Property Rights provide means by which an owner or an innovator can protect his innovation etc. from being imitated and safeguard the fruits of his valuable labour and investment.
- The Department of Industrial Policy and Promotion of the Ministry of Commerce and Industry of the Government of India is the nodal agency for protection of IPRs in India.
- In the matter of protection of copyrights, a 'Copyright Office' has been set up in the Department of Education of the Ministry of Human Resource Development
- An Intellectual Property Appellate Board (IPAB) has also been established by the Central Government.

IPR legislations in India

- The Copyrights Act, 1957 and The Copyrights Rules, 1958
- The Trade Marks Act, 1999 and The Trade Marks Rules, 2002
- The Geographical Indications of Goods (Registration and Protection) Act, 1999 and The Geographical Indications of Goods (Registration and Protection) Rules, 2002
- The Designs Act, 2000 and The Designs Rules, 2001
- The Semiconductors Integrated Circuits Layout-Design Act, 2000 and The Semiconductors Integrated Circuits Layout-Design Rules, 2001
- The Biological Diversity Act, 2002 and The Biological Diversity Rules, 2004
- The Patents Act, 1970 and The Patents Rules, 2003
- The Protection of Plant varieties and Farmers Rights Act, 2001 and The Protection of Plant varieties and Farmers Rights Rules, 2003

Professional Opportunities in IPRs

- Registration Services - Registration of Patents, Trademarks, Copy rights & Geographical indications etc. at both national & international level
- Representations before statutory authorities wherever permissible and possible.
- Documentation - Drafting of Application for registration of the Intellectual property rights
- Valuation of the Intellectual property rights and Strategic Advises related to Sale / Acquisitions of Intellectual property rights.

Professional Opportunities in IPRs

- Advisory Services on Taxation of Intellectual property rights - Service Tax , Income Tax and Capital gains
- Accounting of Intellectual property rights
- Negotiating Royalty , Agency, Distribution, Franchise , Drafting licenses , non-disclosure agreements and Licensing agreements
- Joint venture and Foreign Collaboration
- Intellectual Property Management & Audit
- Preparation for contesting opposition against application for registration of Intellectual property rights (in case of Patents, Trade marks, Geographical Indicators)

Professional Opportunities in IPRs

- Registration of copyright protected works i.e. literary, artistic, cinematographic work and computer programs.
- Patent and trademark litigation support including representation in hearings before the examiner, assistant, deputy, joint controller and controller of patents and assistant registrar and registrar of trademarks, filing oppositions and initiating infringement actions.
- Function as an Arbitrator - resolve infringement matters - through Alternative Dispute Resolution when appropriate
- Advisory on acquisition of intellectual property assets and a thorough due diligence review of complex ownership issues.

Professional Opportunities in IPRs

- Advisory and assistance in negotiating and structuring intellectual property development agreements, including joint development agreements
- Analyzing and assisting in strategically positioning Intellectual property rights to achieve maximum valuation and growth
- Registration of Domain Names
- Infringement Analysis Opinions and certifications
- Advisory on assignments of Trademarks
- Trademark Agent

Related Websites

- Patents Office :
<http://www.patentoffice.nic.in/ipr/patent/patents.htm>
- Copy Right Authority under the Ministry of Human Resource and Development : <http://copyright.gov.in/>
- Trade Mark registry :
http://www.patentoffice.nic.in/tmr_new/default.htm
- Designs registration office:
<http://www.patentoffice.nic.in/ipr/design/designs.htm>
- Information on Geographical Indicators:
http://www.patentoffice.nic.in/ipr/gi/geo_ind.htm
- The Convention on Biological Diversity :
<http://www.biodiv.org/default.shtml>
- Ministry of Environment & Forests: <http://envfor.nic.in/>
- Information on protection of plant varieties and farmers rights :
<http://www.plantauthority.in/>

Labour Laws

- Labour law is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations.
- The law relating to labour and employment in India is primarily known under the broad category of "Labour and Industrial Law".
- Under the Constitution of India, Labour is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre.

Labour Laws

- There are over 43 legislations on labour from the Central Government and the number of legislations enacted by the State Governments is close to four times that of the Central Government. Besides, both Central and State Governments have formulated Rules to facilitate implementation of these laws.

Important Labour Legislations

1. The Employees' State Insurance Act, 1948
2. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952
3. The Mines Act, 1952
4. The Child Labour (Prohibition and Regulation) Act, 1986.
5. The Contract Labour (Regulation and Abolition) Act, 1970.
6. The Equal Remuneration Act, 1976.
7. The Industrial Disputes Act, 1947.
8. The Industrial Employment (Standing Orders) Act, 1946.
9. The Maternity Benefit Act, 1961
10. The Minimum Wages Act, 1948

Important Labour Legislations

11. The Payment of Bonus Act, 1965
12. The Payment of Gratuity Act, 1972
13. The Payment of Wages Act, 1936
14. The Apprentices Act, 1961
15. Unorganized Workers Social Security Act, 2008
16. The Employers' Liability Act, 1938
17. The Factories Act, 1948
18. The Plantation Labour Act, 1951
19. The Trade Unions Act, 1926
20. The Workmen's Compensation Act, 1923

Professional Opportunities in Labour Laws

- There are innumerable legislations on Labour in India. Consultancy may be provided on various matters in relation to these laws e.g –
 - Internal Audit
 - Registration
 - Licenses
 - Forms
 - Submission of Returns
 - Displays required to be made
 - Registers to be maintained
 - Periodic Information to be filed with the concerned authorities

Related Websites

- Ministry of Labour and employment)
- <http://www.labour.nic.in/>
- Labour Bureau
- <http://labourbureau.nic.in/>
- V. V. Giri National Labour Institute
<http://www.vvgnli.org/>
- Trade Union
<http://www.tradeunionindia.org/>
- International Labour Organisation
<http://www.ilo.org/global/lang--en/index.htm>

Laws relating to Charity Sector

- The legal framework for the charity sector in India is quite complex with a number of different acts of legislation governing it in their own way.
- There is no single piece of legislation, which comprehensively governs the sector and similarly no single regulator exists.
- Charities can be formed in multiple ways and may be subject to various acts of legislation. It is the choice of the persons forming the charity to decide which form to take.
- Different legal provisions exist at the national and state level. Some states in India have enacted their own law to govern certain forms of charities.

Important Legislations

1. Public Trusts Acts of various States
2. The Societies Registration Act, 1860
3. The Companies Act, 1956
4. The Income Tax Act, 1961
5. The Foreign Contribution (Regulation) Act, 1975

Societies

- Religious Societies Act 1880
- Religious Institutions (Prevention of Misuse) Act 1988
- Co-operative Societies Act 1912
- Multi State Co-operative Societies Act 2002

Important Legislations

Trusts

- Indian Trusts Act, 1882
- Charitable and Religious Trusts Act, 1920
- Religious Endowments Act, 1863
- Charitable Endowments Act 1890
- Hindu Religious and Charitable Endowments Act 1951
- Official Trustees Act 1913
- Mussalman Wakf Act 1923
- Mussalman Wakf Validating Act 1913
- Mussalman Wakf Validating Act 1930
- Wakf Act 1995

Professional Opportunities in Charity Sector

1. Conceptualizing – Deciding form of organization
2. Formation of organization - Drafting of Trust deed, Bye Laws of Society etc.
3. Registration
4. Channelising funds
5. Audit
6. Taxation
7. Compliances under the Foreign Contribution (Regulation) Act, 1975 if receiving any foreign contribution from a foreign source
8. Compliances under Societies Act, Trust Act etc.
9. Maintenance of Books and Accounts

Environmental Laws

- There is an extensive network of environmental legislation in the country.
- The Ministry of Environment and Forests is the nodal agency in the administrative structure of the Central Government, for the planning, promotion, co-ordination and overseeing the implementation of environmental and forestry programmes.
- The organizational structure of the Ministry covers number of Divisions, Directorate, Board, Subordinate Offices, Autonomous Institutions, and Public Sector Undertakings
- Some Important Environment Legislations in the Country :
 1. The Environment (Protection) Act, 1986
 2. The Environment (Protection) Rules, 1986

Environmental Laws

3. Hazardous Waste (Management and Handling) Rules, 1989
4. The Public Liability Insurance Act, 1991
5. The National Environmental Tribunal Act, 1995
6. The Biomedical waste (Management and Handling) Rules, 1998
7. The Municipal Solid Wastes (Management and Handling) Rules, 2000
8. Water (Prevention and Control of Pollution) Act, 1974
9. The Water (Prevention and Control of Pollution) Cess Act, 1977
10. The Water (Prevention and Control of Pollution) Cess Rules, 1978
11. Air (Prevention and Control of Pollution) Act, 1981
12. The Air (Prevention and Control of Pollution) Rules, 1982
13. The Atomic Energy Act, 1982

Professional Opportunities in Environmental Laws

- Give opinion on - viability of various projects, technologies to prevent pollution and clean up polluted resources.
- Obtain consents under the various environmental regulations and also ensure that the conditions of the consent order are complied with on a regular basis.
- Advise on alternative ways to handle projects in an environmentally sensitive manner.
- Obtaining Consents under the Water Pollution Act, 1974 and Air Pollution Act, 1981
- Submitting Application form For obtaining No Objection Certificate (NOC) from the Pollution Control Boards
- Environmental Clearance and Environmental Impact Assessment (EIA)

Related Websites

- Ministry of Environment and Forests
<http://envfor.nic.in>
- Central Pollution Control Board
<http://www.cpcb.nic.in>
- Council of Scientific and Industrial Research
<http://www.csir.res.in> -

State Pollution Control Boards

1. Andhra Pradesh - <http://www.appcb.org>
2. Assam - <http://www.pcbassam.org>
3. Chattisgarh - <http://www.enviscecb.org>

Related Websites

4. Goa - <http://www.goaspcb.gov.in>
5. Gujarat - <http://www.gpcb.gov.in/>
6. Haryana - <http://hspcb.gov.in>
7. Himachal Pradesh - <http://hppcb.nic.in>
8. Karnataka - <http://kspcb.kar.nic.in/>
9. Kerala - <http://www.keralapcb.org/>
10. Maharashtra - <http://mpcb.mah.nic.in>
11. Manipur - http://npcbngl.nic.in/ABOUT_US.HTM
12. Madhya Pradesh - <http://www.mppcb.nic.in>
13. Meghalaya - <http://megspcb.gov.in>
14. Orissa - <http://www.ospcboard.org>

Related Websites

15. Punjab - <http://www.ppcb.gov.in>
16. Rajasthan - <http://rpcb.nic.in>
17. Tamil Nadu - <http://www.tnpcb.gov.in>
18. Tripura - <http://www.tripura.nic.in>
19. Uttar Pradesh - <http://www.uppcb.com>
20. Uttaranchal - <http://gov.ua.nic.in/ueppcb/>
21. West Bengal - <http://www.wbpcb.gov.in>

Laws relating to Carbon Credits

- Carbon credits are a key component of national and international emissions trading schemes that have been implemented to mitigate global warming. They provide a way to reduce greenhouse effect emissions on an industrial scale by capping total annual emissions and letting the market assign a monetary value to any shortfall through trading.
- The framework governing carbon credit is contained in the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol. www.caaa.in

Laws relating to Carbon Credits

- The UNFCCC is an international environmental treaty entered into force on 21st March 1994. The Convention currently has 194 Parties. India signed UNFCCC on 10th June 1992 and ratified it on 1st November 1993.
- The Kyoto Protocol is an addition to the UNFCCC treaty entered into force on 16th February 2005. It has more powerful and legally binding measures than the UNFCCC. Currently there are 191 parties to the Kyoto Protocol of the UNFCCC. India acceded to the Kyoto Protocol on 26th August 2002.

Professional Opportunities in Carbon Credits

- Conceptualizing the Clean Development Mechanism (CDM) project
- Quantification of greenhouse gases (GHG) Carbon Footprint
- Selection of Cleaner technologies for New projects
- Project risk analysis
- Registration of project - both national and international level
- Obtaining Host country approval
- Preparation of Project Concept Note
- Preparation of Project Design Document
- Selection of Methodologies and Baseline

Professional Opportunities in Carbon Credits

- Legal and regulatory advice during negotiations with host country Designated National Authority (DNA)
- Advice on the appointment of independent validators
- Assistance in getting verification done by Designated Operational Entity (DOE)
- Ensure Compliances

Professional Opportunities in Carbon Credits

- Assisting various Ministries associated with National Action Plan on Climate Change (NAPCC)
- Carbon Finance
- Energy Audit under The Energy Conservation Act 2001
- Accounting advisory services
- Taxation advisory services

Related Websites

- <http://envfor.nic.in/cc/index.htm>
- <http://cdm.unfccc.int/index.html>
- <http://www.ficci.com>
- <http://www.mcxindia.com>
- <http://www.worldbank.org>
- <http://www.cdmindia.com>
- <http://www.cdmindia.nic.in>
- <http://www.teriin.org/>
- <http://www.iexindia.com>
- <http://www.ipcc.ch/>

Laws relating to Alternate Dispute Resolution (ADR)

- Alternate or Alternative dispute resolution (ADR) includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of litigation.
- Arbitration is a process of ADR in which a neutral third party (called the arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard. It is the means by which parties to a dispute get the same settled through the intervention of a third person, but without having recourse to court of law.

Laws relating to Alternate Dispute Resolution (ADR)

- The statutory provisions on arbitration are contained in the Arbitration and Conciliation Act, 1996
- International Commercial Arbitration is one of the several forms of ADR for International Commercial Agreements..
- International Arbitration in the context of India is arbitration where at least one of the parties is an individual national of or habitually resident in a country other than India or a body corporate incorporated outside India or a company or an Association or a Body of Individuals whose central management and control is exercised from out of India or by a Government of a Foreign Country.

Professional Opportunities in ADR

- S. 2 (2) (iv) of the Chartered Accountants' Act, 1949 read with Regulation 191 of the Chartered Accountants' Regulations, 1988 specifically provides that a Chartered Accountant in his professional capacity is allowed to act as an Arbitrator.
- Chartered Accountants with their objective, independent and balanced in their approach to a problem can be ideally placed to act as arbitrators or conciliators and play a mediator's role in resolving conflict situations between partners, business associates, employers and employees etc

Professional Opportunities in ADR

Role under Arbitration & Conciliation Act, 1996

1. Drafting of Arbitration Agreement
2. Representing either of the party (plainant and defendant) to the dispute in the arbitral proceedings
3. Assisting Arbitrator in drafting arbitral award
4. Assisting both parties to go to Court of Law
5. Assisting in preparing submissions to arbitrator
6. Member of Arbitral Tribunal
7. Assisting Trade and Industry associations in setting up Alternate Dispute Redressal (ADR) mechanism.
8. Acting as arbitrator where required. In some legislations, redressal of dispute or particular kind of disputes are mandatorily to be resolved through Arbitration.

Professional Opportunities in ADR

Role in International Commercial Arbitration:

- To help clients in the process of Selecting an Arbitration Institution.
- Act as arbitrator for international commercial disputes.
- Determining the procedural law to be applied
- Draft commercial trade agreements
- Draft Arbitration clauses in international contracts
- Drafting of a proper arbitration agreement considering the arbitration rules promulgated by various international institutions

Related Websites

- Indian Council of arbitration:
<http://www.ficci.com/icanet/>
- Indian Institute of Arbitration & Mediation:
<http://www.arbitrationindia.com/>
- The International Centre for Alternative Disputes Resolution:
<http://www.icadr.org/>
- Permanent Court of Arbitration:
<http://www.pca-cpa.org>
- United Nations Commission on International Trade Law:
<http://www.uncitral.org>
- International Chamber of Commerce
<http://www.icc.org>

Laws relating to International Trade

- India's principal law governing foreign trade is the Foreign Trade (Development and Regulation) Act, 1992.
- In accordance with the Act, the Government of India formulates and announces a foreign trade policy and amends it from time to time.
- The latest Foreign Trade Policy (FTP) was announced in 2009. It shall come into force with effect from 27th August, 2009 and shall remain in force upto 31 st March, 2014 unless otherwise specified.
- The Department of Commerce under the Ministry of Commerce and Industry is the most important organ concerned with the regulation, development and promotion of foreign trade in India.

Professional Opportunities in International Trade Laws

1. Advisory on Foreign Trade Policy and Procedures
2. Compliance with Foreign Trade Procedures
3. Setting up 100% EOU/STP/EHTP/BTP/SEZ units
4. Assistance in fulfilling the regulatory and licensing requirements
5. Obtaining government clearances
6. Liasoning across related government agencies
7. Documentation
8. Risk assessment

Professional Opportunities in International Trade Laws

9. Ensuring compliance of various national rules and regulations
10. Judicious management of finance, credit and security
11. Consultation of the following types – General; Financial; Project; and Tax
12. Analysis of business operations and facilitation services
13. Formation of a company/subsidiary of a foreign company
14. Development of strategies and implementation plans according to the specific needs of the clients
15. Procurement of Export-Import Finance

Related Websites

- <http://www.cbec.gov.in/>
- <http://commerce.nic.in/>
- <http://dgft.delhi.nic.in/>
- <http://goidirectory.nic.in/>
- <http://www.incometaxindia.gov.in/>
- <http://meaindia.nic.in/>
- <http://finmin.nic.in/>
- <http://rbi.org.in/home.aspx>
- <http://www.eximbankindia.in/index.asp>

Laws relating to Special Economic Zones

- Special Economic Zones (SEZs) are specifically delineated duty-free enclaves treated as a foreign territory for the purpose of industrial, service and trade operations, with exemption from customs duties and a more liberal regime in respect of other levies, foreign investment and other transactions.
- With effect from 10th February, 2006 the activities relating to Special Economic Zones are guided by the provisions contained in the Special economic zones Act, 2005 and the Special economic zones Rules, 2006.

Laws relating to Special Economic Zones

- Apart from The Special Economic Zones Act 2005, various State also have there acts, rules and policies pertaining to SEZ like:
- Gujarat SEZ Act
- Haryana SEZ Act
- Madhya Pradesh SEZ Act
- West Bengal SEZ Act
- Tamil Nadu SEZ Act
- Punjab SEZ Act
- Gujarat SEZ Authority Rule
- Jharkhand Special Economic Zone Policy

Laws relating to Special Economic Zones

- Uttar Pradesh SEZ Revised Policy – 2007
- Karnataka State Policy for Special Economic Zones – 2009
- Punjab Special Economic Zone Policy - 2005
- Chandigarh Administration Special Economic Zone Policy - 2005
- Kerala Special Economic Zone Policy-2008
- West Bengal Special Economic Zone Policy
- Maharashtra Special Economic Zone Policy
- Madhya Pradesh Special Economic Zone Policy

Professional Opportunities in SEZs

1. Assistance in preparation of project report
2. Assistance in Necessary applications to and compliances required by the Board of Approval, State Government, Development Commissioner, Approval Committee etc.
3. Representation before Board of Approval on behalf of any person aggrieved by the order passed by the Approval Committee
4. Consultancy services for setting up and developing units in Special Economic Zones
5. Availing benefits of various privileges and exemptions available to these categories of enterprises
6. Certification of Reports

Related Websites

- <http://www.sezindia.nic.in>
- <http://www.dbtindia.nic.in/>
- <http://www.eouindia.gov.in/>
- <http://www.stpi.in/>
- <http://www.seepz.com/>
- <http://www.kasez.com>
- <http://www.csez.com/>
- <http://www.mepz.gov.in/>
- <http://www.vsez.gov.in/>
- <http://www.fepz.com/>

Laws Applicable to Non Banking Financial Institutions

- Non Banking Finance Companies (NBFCs) are companies incorporated under the Companies Act, 1956 and desirous of commencing business of non-banking financial institution as defined under Section 45 I(a) of the RBI Act, 1934 which should have a minimum net owned fund of Rs 200 lakh (w.e.f April 21, 1999).
- The legal framework of Non- banking companies is provided in Chapter III B, III C and Chapter V of the Reserve Bank of India Act, 1934.

Laws Applicable to Non Banking Financial Institutions

- All NBFCs, being companies registered under the Companies Act, have to fulfill compliance relating to the Board of Directors, Share Capital, Management Structure, Audits, Meetings, maintenance as well as publication of books of accounts and general conduct as per the requirements of the Companies Act 1956.
- In addition, they have to fulfill the specific requirements of the RBI as set out in the Directions and its various notifications and circulars

Professional Opportunities in NBFCs

- Assist in Application for Registration with Reserve Bank of India (RBI) to commence / carry on any business of non banking financial institution
- Display the Certificate of Registration or a certified copy thereof at the Registered office and other offices/branches
- Obtain specific authorization from RBI to accept deposits from the public and maintain the Liquid Asset Requirement as required by RBI
- A wide gamut of legislations are applicable to NBFCs and assistance may be provided in compliance with them
- Compliance with RBI Directions and Prudential Norms

Professional Opportunities in NBFCs

- Submission of Annual, Quarterly and Monthly Returns
- Ensure adherence with Know Your Customer Guidelines, Fair Practice Code, Corporate Governance Guidelines etc.
- Internal Audit
- Statutory Audit
- Compliance Audit of various Regulations

Related Websites

- Reserve Bank of India

http://www.rbi.org.in/scripts/BS_NBFCList.aspx

Insolvency Laws

- Insolvency exists for a person or organization when total financial liabilities exceed total financial assets.
- Insolvency is not a synonym for bankruptcy, which in the US is a determination of insolvency made by a court of law with resulting legal orders intended to resolve the insolvency.
- Under the Constitution of India ` Bankruptcy & Insolvency ` is Entry 9 in the List III -Concurrent List, (Article 246 –Seventh Schedule to the Constitution) i.e both Center and State Governments can make laws relating to this subject.

Insolvency Laws

- The stream of insolvency laws in India can be segregated under three heads:
 1. Pre-Insolvency Workouts
 2. Personal Insolvencies
 3. Corporate Insolvencies

Professional Opportunities in Insolvency Laws

1. Performing The test for insolvency
2. The attestation for Statement of Affairs by updating books of accounts
3. The valuation of assets and liabilities
4. The attestation for due diligence and compliance for early & easy exit of companies
5. The capacity of CA being a professional insolvency practitioner e.g. Liquidator, Trustee, executor, administrator, arbitrator, receiver, adviser, representative for costing, financial or taxation matters

Professional Opportunities in Insolvency Laws

6. CA's have also been recognised for the following purpose on matters relating to winding up:
- As a technical member at the National Company Law Tribunal (NCLT)
 - As a member of the Appellate Tribunal
 - As a legal representative before Tribunal
 - Certificate from auditor is required for reference to tribunal in case of sickness
 - Appointment as Official Liquidator

Related Websites

- Ministry of Corporate Affairs
<http://www.mca.gov.in/>
- Board for Industrial and Financial Reconstruction (BIFR)
<http://www.bifr.nic.in/>
- United Nations Commission on International Trade Law (UNCITRAL)
<http://www.uncitral.org/>

Real Estate Laws

List of Central Laws Pertaining To Real Estate Transactions

1. The Indian Contract Act, 1872
2. The Transfer of Property Act, 1882
3. The Indian Registration Act, 1908
4. The Specific Relief Act, 1963
5. The Urban Land (Ceiling & regularization) Act, 1976
6. The Land Acquisition Act, 1894
7. The Indian Evidence Act, 1872

Real Estate Laws

8. The Indian Stamps Act, 1899
9. The Rent Control Act
10. The State Laws governing the real estates
11. Law governing property tax
12. The Consumer Protection Act, 1986
13. The Arbitration & Conciliation Act, 1996
14. Income Tax Act, 1961

Real Estate Laws

- 15. The Wealth Tax Act, 1957
- 16. The Co-operative Societies Act, 1912
- 17. The Multi-State Co-operative Societies Act, 1912
- 18. Finance Act in relation to Service Tax
- 19. FEMA
- 20. SEBI norms for Real Estate Mutual Funds
- 21. Foreign Direct Investment Guidelines (FDI)

Professional Opportunities in Real Estate

- Real Estate Consultant
- Investment in Real Estate
- Valuation of Real Estate
- Registration Procedures
- Property Succession Procedures
- FDI
- Accounting and Taxation

Drafting of Documents

- Drafting as a skill in terms of preparing documents and agreements is the most intellectually demanding of all skills for a professional.
- Drafting may be defined as the synthesis of law and fact in a language form. It requires a knowledge of the law, the ability to deal with abstract concepts, investigative instincts, an extraordinary degree of prescience, and organizational skills
- Every Transaction is unique in its own way. Simply copying a Model Form does not reward in the long run. Therefore Drafting assumes importance in the long run.
- Most of the model standard forms which we are using today in India, are the legacy of the British. These forms and precedents in use today have come down by practice prevailing since a long time. Some words and phrases are in Old English and are not understandable to the layman. They need to be simplified.

Professional Opportunities in Drafting

- Documents for Formation of an Entity - Partnership Deed; MOA/ AOA; Trust Deed
- Wills
- Business Agreements – Arbitration; Joint Venture; Foreign Collaboration; Franchisee; Research & Development; Technology Sharing Agreements
- Property Agreements - Transfer Deed; Lease Agreement; Gift Deed of Property; Construction Agreement; Rent Agreement; Sale/ Purchase Agreement; Agreement to Sell; Relinquishment Deed; Mortgage Deed
- Power of Attorney
- Affidavits
- Documents relating to Intellectual Property - Patent and High Technology Agreements; Licensing and Franchise; Consulting and Know-How Agreements; Software Development Agreements

Professional Opportunities in Drafting

- Banking Documents - Bank Guarantee; loan agreements / lease deeds; overdraft agreements
- Export/Import documents – Letter of Credit; Agency Agreement; Documents for obtaining EXIM finance
- Documents relating to Labour Laws and Service Laws
- Documents relating to Insurance
- Documents relating to Public Interest Litigation, Environmental Issues etc.
- Documents Relating to Private Equity Form of Funding - Business Plan; Term Sheet; Warranties and Indemnities; Disclosure Letter; Shareholders' / Investors' Rights/ Subscription Agreement
- Documents relating to Cyber Law

Related Websites

Plain English Courses

- <http://www.plainenglish.co.uk/training/online.html>
- <http://www.wordcentre.co.uk/>
- <http://www.clarity.com.hk/>

Documents under Private Equity

- Private equity is a broad term which commonly refers to any type of non-public Ownership Equity securities that are not listed on a public exchange
- It provides long-term, committed share capital in return for an equity stake, to help potentially high growth unquoted companies grow and succeed.
- The private equity asset class includes venture capital, buyouts, and mezzanine investment activity, and can be divided into the following categories
- Private equity investment is typically a transformational, value-added active investment strategy. It involves investing in securities through a negotiated process which may consist of stages.
- Various Legislations in force in India have a bearing on Private Equity Deals

Documents under Private Equity

- Important documents required in the Private Equity process include:
 1. Business Plan
 2. Term Sheet
 3. Warranties and Indemnities
 4. Disclosure Letter
 5. Shareholders' / Investors' Rights/ Subscription Agreement
 6. Company's Memorandum and Articles of Association

Professional Opportunities in Private Equity

1. Undertaking an Initial appraisal of Management's financing proposition
2. Preparation and advising on Business Plan
3. Advice on valuation of the business
4. Undertaking financial modeling
5. Advice on the most appropriate capital structure
6. Structuring the deal
7. Negotiation, Review and Appraisal of the Terms of the Deal
8. Project management of transaction
9. Advising on the future plans and exit routes

Professional Opportunities in Private Equity

- 10. Due Diligence Reporting
- 11. Taxation Advice
- 12. Advice on Legal and Regulatory Issues
- 13. Auditing
- 14. Directorship
- 15. Risk Management
- 16. Assistance in Documentation

Related Websites

- <http://www.indiavca.org/>
- <http://www.privateequity.com/>
- <http://www.indiape.com/>
- <http://www.vcindia.com/>

Representation before Authorities

- A Professional like CA, CS etc. is presumed to possess a fairly in-depth knowledge of and experience in dealing with economic and fiscal laws, accounting issues and matters pertaining to banking and other commercial matters.
- A Professional's role as counsel in legal proceedings is recognized by :
 - Income Tax Act, 1961
 - Wealth Tax Act, 1957
 - Central Excise Act, 1944
 - Customs Acts, 1962
 - The Competition Act, 2002
 - Foreign Exchange Management Act, 1999

Representation before Authorities

Foreign Contribution (Regulation) Act, 1976

- . Value added Tax, 2002
- Service Tax - Chapter V of the Finance Act, 1994
- The Prevention of Money Laundering Act, 2002
- . The Company Law Board Regulations
- . Anti-dumping, Anti-subsidy and Safeguard Laws
- . Representations to banking and financial institutions
- . Domestic Trade Laws
 - Consumer Protection Act, 1986
 - Copyright Act, 1957
 - Economic Offences Act, 1974
 - Environment Protection Act, 1986

Representation before Authorities

- Essential Commodities Act, 1955
- Essential Commodities (special provisions) Act, 1981
- Patents Act, 2000
- Sales Promotions Act, 1976
- Trade and Merchandise Marks Act, 1958

The Limited Liability Partnership Act 2008

- The Act received the President's Assent on 7.1.2009 and was notified on 31.3.2009
- The Act has 14 chapters containing 81 Sections and 4 schedules
- Limited Liability Partnership Rules 2009 notified on 01.04.2009
- Conversion of companies and firms notified on 22.05.2009 with effect from 31.05.2009
- First LLP registered on 02.04.2009
- 1785 LLPs are registered as of 12-07-2010

Contd....

Features of LLP form

- A body corporate
- Perpetual succession
- Legal entity separate from its partners.
- Can own assets in its name, sue and be sued.
- Unlike corporate shareholders, the partners have the right to manage the business directly
- One partner is not responsible or liable for another partner's misconduct or negligence.
- Liability of the partners is limited to their agreed contribution in the LLP
- Unlimited Liability in case of Fraud

Contd...

- Should be 'for profit' business.
- Minimum of 2 partners and no maximum
- Atleast two individuals as Designated Partners, of whom at least one shall be resident in India.
- LLP Agreement
- Statement of Account and Solvency
- LLP shall maintain books of accounts.
- Audit of the accounts is required only if the contribution exceeds Rs. 25 lakhs or annual turnover exceeds Rs.40 lakhs.

Professional Opportunities

- Determining suitability of business for formation of LLP
- Guidance & Execution in formation of LLP
- Providing a statement that all requirements of the LLP Act & related rules have been complied in respect of incorporation & other related matters.
- Drafting of LLP agreement /Incorporation Document
- Advice on conversion from other forms to LLP
- Advice in accounting & taxation
- Internal/statutory Audit of LLP
- Liquidator
- Various appeals & appearance before NCLT & NCLAT

Related Websites

- Ministry of Corporate Affairs:
<http://www.mca.gov.in/>
<http://www.llp.gov.in/>
- <http://www.llponline.in/>

Foreign Exchange Management Act, 1999 (FEMA)

- The Act came into force on 1st June 2000.
- FEMA contains 49 sections of which 12 sections cover operational part and the rest contravention, penalties, adjudication, appeals, enforcement directorate, etc.
- The departments governing the enforcement of Foreign Exchange Management Act, 1999 and its various rules and regulations are:
 1. Exchange Control Department of Reserve Bank of India (RBI).
 2. Directorate of Enforcement, Department of Revenue, Ministry of Finance.
 3. Capital Markets Division, Department of Economic Affairs, Ministry of Finance.
 4. Foreign Trade Division, Department of Economic Affairs, Ministry of Finance

Contd...

- Broadly speaking FEMA, covers, three different types of categories, and deals differently with them.
 - A) Person
 - B) Person Resident In India
 - C) Person Resident Outside India
- The object of the Act is to consolidate and amend the law relating to foreign exchange with objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.
- This Act extends to the whole of India and will also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India. It will also be applicable to any contravention committed outside India by any person to whom this Act is applicable.

Professional Opportunities

- Obtaining Government Approval wherever required
- Compliances under FEMA rules and regulations and RBI circulars etc.
- Consultancy in realisation and repatriation of foreign exchange
- Adherence to compliances in matters of borrowings and lendings in foreign exchange, if permitted by RBI
- Representation before Authorities
- Taxation
- Certification
- Applications to RBI
- Foreign exchange derivative contracts
- Consultancy on Issue of Foreign Currency Convertible Bonds, American Depositary Receipt, Global Depositary Receipt etc.

Related Websites

- Ministry of Finance
<http://finmin.nic.in/>
- Department of Revenue
<http://dor.gov.in/>
- Reserve Bank of India
<http://www.rbi.org.in/home.aspx>

Right to Information Act, 2005

- Right to Information in India : Part III of the Constitution of India addresses fundamental rights. Article 19(1) (a) guarantees freedom of speech and Expression.
- The Right to information Act, 2005 came into force on the 12th October, 2005
- Right to Information Act 2005 gives right to access information held by “ public authorities” .

Contd...

- An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Professional Opportunities

- Maintenance of records (Sec 4 (1)(a))
- Preparation of details of publication (Sec 4((1) (b))
- Audit on compliance of legal issues
- Establishing internal controls
- Monitoring and sending progress reports at regular intervals

Related Websites

- RTI Portal of Government of India
<http://rti.gov.in/>
- Commonwealth Human Rights Initiative
<http://www.humanrightsinitiative.org>
- Central Information Commission
<http://www.cic.gov.in>

The Registration Act 1908

- The Registration of documents is made under the provisions of the Registration Act, 1908.
- The Registration Act 1908 is used for proper recording and registration of documents / instruments, which give them more authenticity.
- The authorities dealing with registration under the Registration Act, 1908 are as follows:
 - Inspector General of Registration (appointed by State Government)
 - Inspectors of Registration Offices (appointed by State Government and is subordinate to the Inspector General)
 - The State Govt. shall form Districts and Sub-Districts for purpose of the Registration Act 1908
 - Registrars of Districts
 - Sub-Registrars of Sub-Districts

Professional Opportunities

- Presentation of Document for registration at the office of Registrar/Sub-Registrar in whose jurisdiction the property is located
- Consultancy regarding which document needs to be registered
- Adherence to time limits of registration as if document is not registered it becomes redundant and useless for all practical purposes. It can only be accepted as evidence in criminal proceedings.

The Indian Stamp Act 1899

- Stamp duty is a form of tax that is levied on documents
- The provisions regarding levying, collection and payment of stamp duty are contained in the Indian Stamp Act 1899.
- Under the Act, certain documents need to be legitimised by paying applicable stamp duty on them.
- Stamp Duty is payable on instruments and not on transactions.
- The instruments/ documents without the requisite Stamp Duty are liable to be seized by any Public Officer or Court before whom it is produced or whenever it comes before them in the course of discharge of their duties.
- An instrument not 'duly stamped' cannot be accepted as evidence by civil court, an arbitrator or any other authority authorised to receive evidence. However, it can be accepted as evidence in criminal court.

Professional Opportunities

- Consultancy in matters of – Instruments chargeable to duty, Duty payable when several instruments, or duty payable when instrument pertains to several distinct matters etc.
- Assistance in selecting mode of paying stamp duty and compliance with the prescribed time limit of stamping instruments
- Assistance with E-stamping - web-based application for paying stamp duty to the government
- Appointment as Authorised Collection Centre (ACC) in E-Stamping framework. ACC is an agent appointed by the Central Record Keeping Agency (CRA) and is the intermediary between the CRA and Stamp Duty payer.

Related Websites for Registration and Stamping

- www.shcilestamp.com.
- http://assamgovt.nic.in/departments/registration_dept.asp#01
- <http://registration.bih.nic.in/>
- <http://www.karigr.org/actsrules/stampduty/default.htm>
- http://chandigarh.nic.in/citizen_regprop.htm
- <http://delhigovt.nic.in/index.asp>

About the Author

- *CA. Rajkumar S Adukia is an eminent business consultant, academician, writer, and speaker. He is the senior partner of Adukia & Associates.*
- *In addition to being a Chartered Accountant, Company Secretary, Cost Accountant, MBA, Dip IFR (UK), Mr. Adukia also holds a Degree in Law and Diploma in Labor Laws and IPR.*
- *Mr. Adukia, a rank holder from Bombay University completed the Chartered Accountancy examination with 1st Rank in Inter CA & 6th Rank in Final CA, and 3rd Rank in Final Cost Accountancy Course in 1983.*
- *He started his practice as a Chartered Accountant on 1st July 1983, in the three decades following which he left no stone unturned, be it academic expertise or professional development.*

About the Author

- *He has been coordinating with various Professional Institutions, Associations, Universities, University Grants Commission and other Educational Institutions.*
- *Authored more than 50 books on a vast range of topics including Internal Audit, Bank Audit, SEZ, CARO, PMLA, Anti-dumping, Income Tax Search, Survey and Seizure, IFRS, LLP, Labour Laws, Real estate, ERM, Inbound and Outbound Investments, Green Audit etc.*
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Thank You