

1. Commercial agreement:

The negotiations between parties regarding the commercial aspects of product or services are recorded in commercial agreements in writing. The agreements define the obligations of each party and benefits they will get in return from the agreement.

A commercial agreement usually contains following features:

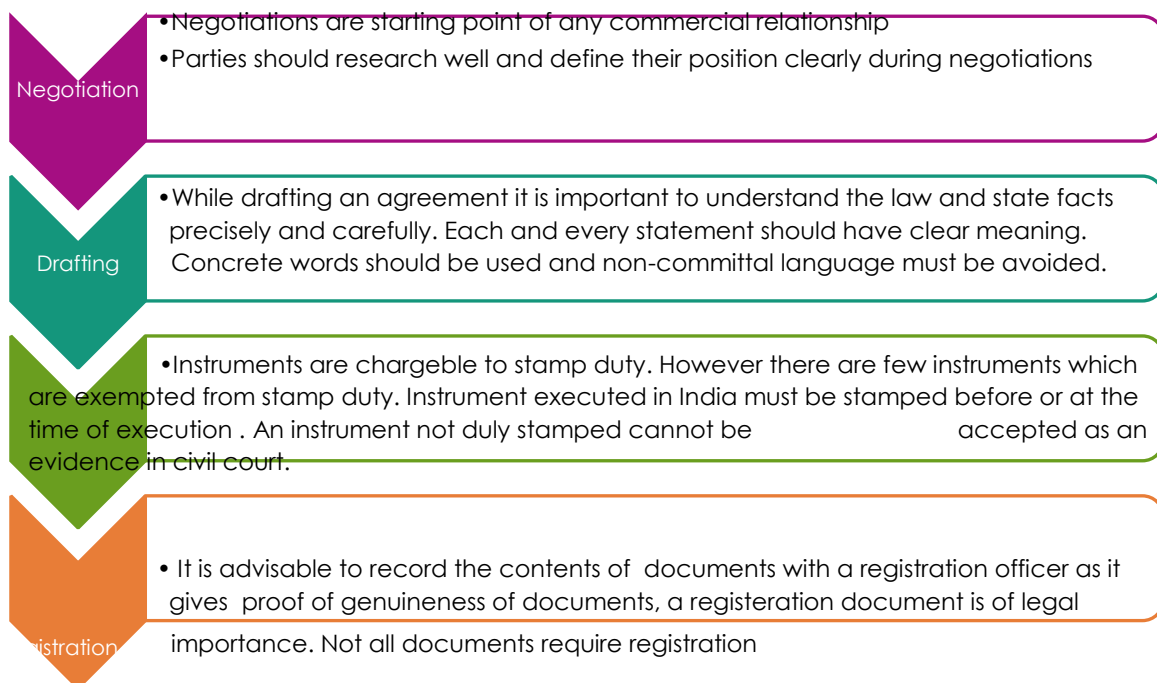
- Identity of parties
- Terms, purpose and duration of agreement
- Commercial benefits
- Obligations of the parties to the agreement
- Termination details
- Signature of parties on stamp paper to prove consent to the agreement

1.2 Contract

A contract is an agreement between two or more persons, enforceable by law it creates a legal relationship of rights and duties on the parties.

1.3 How to enter into a contract

Each contract is unique and it should meet the objectives of parties involved. Negotiations between the parties is the first step for entering into a contract after negotiations a document is drafted which is then stamped and registered.



Please refer to Acts and rules section of <https://www.mpigr.gov.in/indexEnglish.html> for key acts and rules pertaining to stamp duty and registration in Madhya Pradesh

2 Important agreements and contracts

2.1 Some important documents for formation of a business entity

Multiple entities can be formed to carry out business like Trusts, societies, partnership firms, Private limited etc. Each entity requires specific type of agreement or deed. Various types of agreements are discussed as under.

2.1.1 Memorandum of association & Articles of Association

Memorandum of association is an extremely important document to be filed with Registrar of companies. The memorandum is companies charter it contains fundamental information about the company and its operations. Articles of Association (AOA) is an official document governing the operations of a company placed with Registrar of companies. It constitutes contract between company and employees and detail the power of the management. AOA along with memorandum forms company's constitution.

2.1.2 LLP incorporation document and LLP agreement

A Limited Liability Partnership is a hybrid of a company and a partnership. The LLP has both benefits of a limited liability and flexibility of partnerships to its members. Owing to its flexibility LLP is becoming popular vehicle for startups and entrepreneurs. In case of LLP an incorporation document similar to Memorandum of association of Limited Liability Company is formed along with statements of consent from subscribed persons in incorporation documents.

Whereas a Limited Liability partnership agreement is a written agreement between partners of LLP or between LLP and its partners. The agreement determines the right and duties of partners in relation to LLP.

2.1.3 Trust Deed

A written instrument by which a Trust is formed is called a trust deed. A trust deed should contain pertinent information about the Trust like, Name of trust, its location, office of Trust, its objective, Maximum and minimum number of trustees, Trustees rights, duties and powers the Procedures of appointment, removal and replacement of trustees, Administration of trust, beneficiaries, properties, investments and bank account operation, clauses enabling, spending and utilization of the Trust fund or corpus etc.

2.1.4 Association of person's agreement

An association of persons (AOP) is an entity or unit. Associations are formed when two or more persons for a common purpose with a view to earn income. The term Person includes any company or association or body of individuals, whether incorporated or not. If two or more persons join hands to carry on a business but do not constitute a partnership they may be assessed as an AOP.

2.1.5 Not for profit company under section 8

As per section 8 of Companies Act 2013, a not for profit company can be established for "promotion of art, science, sports, education, research, social welfare, charity protection of environment, religion or any other such object. The company thus formed should apply its profits, if any for promoting its

objective. Such companies are registered as companies with limited liability without the addition of prefix limited or private limited. Similar to Companies section 8 companies also have to sign memorandum of association and article of association.

2.1.6 Society

A society is a company or association of persons united together by mutual consent to act or work for some common purpose or idea. In Madhya Pradesh the societies are primarily governed by Madhya Pradesh Society registration Act, 1973.

- The process of registration of societies is elaborated on <http://rfas.cg.nic.in/Index.aspx>
- The application for registration can be submitted on <http://rfas.cg.nic.in/Index.aspx>

2.1.7 Partnership deeds and agreements

All members of a partnership firms have to sign a partnership deed. The partnership deed contains respective rights and obligations of the members of a partnership. The minimum essential characteristics of a partnership deeds are

- Name and address of the firm
- Name and address of the partners
- Nature of the business to be carried out
- Duration of partnership
- Capital contribution by each partner
- Profit sharing ratio among each partner

These are the minimum essential the deed may contain additional clauses specific to the partners' requirements. The partnership deed should be on a stamp paper in accordance with Indian Stamp Act. Partnerships are governed by Indian partnership Act, 1932.

Agreement admitting/introducing a new partner

For introducing new partner in a firm a fresh partnership deed has to be filed, important points like duration of partnership, profit sharing, capital investment should be clearly mentioned in new deed. The partnership deed should be on a stamp paper in accordance with Indian Stamp Act.

Agreement admitting a minor to the benefit of partnership

Section 30 of the Indian Partnership Act, provides that a minor, though cannot be a partner in a firm with consent of all partners for a specified time a minor can avail benefits of partnership executed through his guardian with the other partners. The rights and liabilities of a minor who has been admitted to the benefits of a partnership are governed by rules defined under Indian partnership Act. The agreement should be on a stamp paper in accordance with Indian Stamp Act.

2.1.8 Conversion of partnership into limited company

A firm can be converted into company by following the provisions of Companies Act, 2013. Assent of all partners is necessary before conversion.

2.2 Common Business Agreements

2.2.1 Agency agreement

An agency agreement is a legal contract between the manufacturers or suppliers of goods with agents to sale and promote goods on their behalf. The agency usually receive a commission on sale as per the terms of agreement. Such agreements usually are of following types

- Sole selling agency agreement
- Agreement between manufacturer and sole selling agent with canvassing right
- Agreement by Manufacturer company to appoint agent for a particular area

2.2.2 Annual Maintenance contracts

A maintenance contract is a contract between two parties which creates the agreement that one party will maintain an asset owned by another party. Maintenance contracts can exist for equipment, a building, landscape, computers and other information technologies, housekeeping and more.

2.2.3 Asset purchase agreement

The Asset Purchase Agreement is a contract between a seller of business assets and a buyer. The Asset Purchase Agreement sets the terms of such a sale and includes provisions such as payment of purchase price, and monthly instalments, liens and encumbrances on the assets, condition precedent for the closing, representations of the parties, etc.

2.2.4 Dealership distributor agreement

Depending on the supply chain a distributor is an entity between the producer and another entity in the market. Distributors are important for large market reach. Distributors may be either exclusive or nonexclusive. Dealers are the persons who are in touch with the end users of the product. They will get the products from the distributors and sell it to the end users. The dealership distributor agreements are formed between distributor and dealers.

2.2. 5 Bonds

A bond is a formal contract to repay borrowed money with interest at fixed intervals. Registration of bonds is not mandatory.

- Simple Money Bond
- Money Bond with
Surety □ Indemnity
Bond

2.2.6 Consultancy agreement

Consultancy Agreements are entered into when a business wishes to engage a person or company to provide a specific service to them. The type of relationship is set out clearly in Terms and conditions of the agreement. The relationship usually ends with end of contract term or termination of contract.

2.2.7 Hire purchase agreement

Hire purchase agreement is a contract of hire with option of purchase, under this agreement the goods are hired for a specified period at a fixed rent, with a condition that the entity may get full ownership of goods subject to conditions specified in the contract.

2.2.8 Memorandum of understanding

A Memorandum of Understanding (MOU) is a nonbinding bilateral or multilateral agreement outline mutual accord and terms of engagement on intended common line of action.

2.2.9 Stock purchase agreement

A stock purchase agreement is an agreement entered into by a seller and a purchaser on a fixed date in order to transfer stocks held by the former to the latter. It should be dated and signed in the presence of witnesses.

2.2.10 Indemnity

Indemnity is protection from loss and damage claims filed by another person. Here one party agrees to compensate for potential loss or damages by one party. It may also refer to exemption from liability or damages.

2.2.11 Contract of sale

A contract whereby the seller transfers or agrees to transfer, the goods to the buyer for a price. A contract of sale may be absolute or conditional. A contract where the transfer of ownership is to take place at future date, or subject to some condition to be fulfilled later is called Agreement to sell.

2.2.12 Lease agreement

A Lease Agreement should be used whenever a property is being rented from a landlord.

Go for a lease agreement if you :

- Own a building, house or flat and wish to rent residential space to other individuals
- Own an office building and wish to rent work space to other businesses and individuals; Own a warehouse or industrial space that you would like to lease to another business; or You are leasing commercial space from a landlord.

Types of properties

- Residential
- Commercial

Residential property is type of property, containing either a single family or multifamily structure that is available for occupation for non-business purposes.

The properties approved for commercial uses like offices, retail shops, restaurant, industries, medical clinics, hotel etc are commercial properties and may require commercial lease agreements between the landlord and tenant.

The lease agreement must clearly indicates terms and conditions on following parameters.

- Property specifications and use
- Operating cost and utilities
- and lease terms
- Improvements or changes in property

2.3 Corporate Agreement

2.3.1 Shareholders Agreement

Shareholders' agreements are contracts among shareholders of a company, the agreements states how the company should operate, privileges, protection and obligations of shareholders. The agreement includes information on management of company and regulation of shareholders relationship.

2.3.2 Agreement for underwriting Shares of a Company

Underwriting is an agreement, entered into by a company with a financial agency, in order to ensure that the public will subscribe for the entire issue of shares or debentures made by the company. The financial agency is known as the underwriter. The underwriting agreement, must provide for the period of enforcement, the amount of underwriting obligations etc.

2.3.3 Listing Agreement

A document required to be signed by an entity for being listed in Stock exchange. The entity states its commitment to abide by the regulations of stock exchange.

2.3.4 Share purchase agreement

An agreement that finalizes all terms and conditions related to the purchase and sale of the shares of a company. It is different from an Asset Purchase Agreement where the assets of a company are bought or sold. The agreement must indicate clearly terms and conditions, representation and warranties of the seller and buyer, indemnities and relevant information on tax exemption or liabilities.

2.3.5 Alternative dispute resolution

Alternative Dispute Resolution refers to any means of settling disputes outside of the court. ADR typically includes Negotiations, conciliations, mediation and arbitration. Arbitration: Arbitration is

the settlement of a dispute by the decision not of a court of law but of one or more persons called arbitrators which is executable as a decree of the court.

Model deeds and forms attached for your reference, these documents are for reference only. Any document a person or an entity wishes to enter into should be in consultation with Advocate or a Solicitor.