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THE INFLUENCERS' CODE

Legal FAQs for Social Media Influencers

ABOUT THE BOOKLET

Social Media has not only reshaped content creation but also advertising. Influencers are at the forefront of this change and as you tread through this novel arena, new legal issues also tend to emerge. This booklet is an attempt to make your journey smoother.

Hi,

It gives us immense pleasure to present this e-booklet on legal FAQs for influencers and people working on becoming influencers.

The questions have been chosen based on our experience of working with influencers like yourself. We have covered essential topics relating to copyrights and contracts in this booklet.

Influencing is a new profession, and as you explore this novel space, you may face issues that have not been dealt with extensively in the past. With this booklet, we are looking to provide you with authentic and accurate advice that can help you save time and focus on your work instead of legal hassles.

We understand that legal jargon is not something that interests most people. Therefore, we have tried to keep the language as simple as possible. Nevertheless, we hope you will find this information helpful and practical.

If you still have questions that you need an answer to, we offer a free 30-minute consultation. The link to register is at the end of the booklet.

We wish you all the best in your endeavour.



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LEGAL FAQs FOR SOCIAL MEDIA INFLUENCERS

1. What is copyright?

Copyright is the right of the copyright owner to prevent others from copying their work. Copyright law protects various types of works, including original literary and artistic works, films and sound recordings.

Illustration: Sheela has been toying with an idea for her next reel on Instagram. She writes the script, decides on the props, produces and performs the script, puts up the recording as a reel on Instagram. Sheela is the copyright owner of this reel.

2. Can a copyright owner be different from a content creator?

Yes.

Generally, the author of the work, i.e., the content creator, is the owner of the copyright, but there are certain exceptions depending on the type of work, such as:

- **Literary and artistic work** – author of the work is the copyright owner unless the work has been created in the course of employment or has been created under a contract of service
- **Photograph** – the photographer is the copyright owner unless the photograph has been taken in the course of employment or has been created under a contract of service
- **Cinematographic Film and Sound Recordings** – Usually, the producer of the film or sound recording commissions actors, music composers, lyricists etc., for creating work to be

incorporated in the film or sound recording. In such cases, the copyright rests with the producer.

Illustration: Sheela has been toying with an idea for her next reel on Instagram. She writes the script, decides on the elements to feature in the reel, including photographs taken by her, produces and performs the script, puts up the recording as a reel on Instagram. Sheela is the copyright owner of this reel. She is also the copyright owner of the photographs used in the reel.

If she takes photos from a third-party source, she will not have a copyright in such photographs.

3. When does copyright in my work commence?

Your work is protected under copyright law as soon as it is created. However, ideas cannot be protected under copyright law.

Illustration: Sheela has been toying with an idea for her next reel on Instagram. She shares the idea with Meera. Meera goes ahead and creates content based on the idea. In this case, Meera will be the copyright owner in that reel.

4. Do I need to register copyright in my work? What are the benefits?

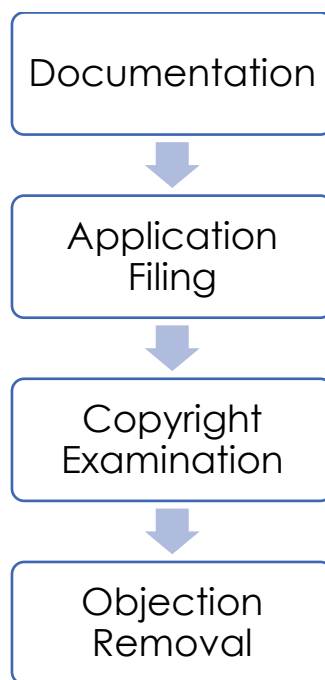
No.

Copyright subsists in an original work without obtaining any registration. Moreover, as soon as you post something publicly (publish your content), your copyright in the content gets further established. Also, in view of some treaties entered into by the countries, copyrightable work created in one country is protected in most other countries.

However, copyright registration can be helpful in certain circumstances, such as in case of court proceedings where copyright is challenged or in cases of infringement of copyright where copyright registration could help establish ownership in work.

5. What is the process for copyright registration? How much time does it take to obtain registration? Do I need to engage a lawyer for this?

The steps involved in copyright registration are:



Timelines – Time taken for registration depends on several factors such as the backlog at the copyright office, objections raised, hearing requirements etc. Generally speaking, registration of copyright can take six months to 1 year from the date of filing.

It is always advisable that you engage a lawyer to assist you in the process.

6. Once I have created something original, do I enjoy the copyright in that work for eternity?

No. Copyright has a fixed term after which the work comes into the public domain, i.e., the content becomes free to be used by others without seeking permission. The term of copyright is as follows:

- a. Literary, dramatic, musical and artistic work: Life of the author + 60 years;
- b. Cinematographic Films and Sound Recordings: Year of publication + 60 years.

This term, however, could differ in different countries where work has been created.

7. My content contains a lot of new ideas. Are those ideas protected?

No.

Copyright law protects the work which has been created, i.e., the way you have expressed it. Therefore, if somebody used the same ideas to create their own content, whether before or after you created it, they would have separate copyright over that content since it will be their own expression of the same idea (and as we have already mentioned, there is no copyright in the idea but only in the expression).

8. If my ideas are not protected, is it safe to discuss my ideas with others?

If you need to discuss your ideas with others, it is advisable to let them know that the idea is being shared in confidence. Wherever possible, sign a Non-Disclosure Agreement. If the idea is being shared through email, notify the receiver by stating the email to be “*Confidential*” in the subject line and the body of the email. If the receiver uses such information

without your permission, they may be committing a breach of confidentiality.

If you share your idea orally, it could be difficult to prove that the idea or information was shared in confidence. Therefore, unless you are sure that information will not be misused, sharing ideas orally should be avoided.

9. What actions can I take if there is a breach of confidentiality?

You can send a legal notice through a lawyer. You can file a lawsuit seeking injunction and damages.

10. Do I have a copyright in the story or reels or videos that I create?

Yes.

In the case of videos (cinematographic films under copyright law), the copyright rests with the producer of the film. If you are producing your own videos, then you have the following rights:

- Make a copy of the video
- Communicate your video to the public
- Sell or rent it

11. If I am not producing the video and only performing in it, then what rights do I have, and what will be the rights of the producer?

Generally, the producer of the video will be the copyright owner and will enjoy all the ownership rights. However, the rights in such cases are defined by the agreement entered into between the producer and the artist or the performer.

You could, for example, have part ownership or some commercial rights, as per the agreement with the producer.

12. A screenshot from my video was used by another content creator. Can I stop such use?

Yes, even an image of your video amounts to creating a copy of the video and is protected under copyright law. Social Media websites have stringent policies on copyright infringement. We suggest you read them thoroughly to understand what action a copyright owner can take in case there is an infringement.

13. Do I have a copyright in the images and posts that I create?

Yes, as long as they are an original creation. Images and posts that you upload could be considered literary or artistic work or both, depending on what is included in the posts. You have the following rights in your literary and artistic works:

- Reproducing the work in any form
- Issue copies of the work to public
- Perform or communicate the work in public
- Make a film or sound recording from the work
- Translate or adapt the work

14. Can I use third-party videos and images in my content?

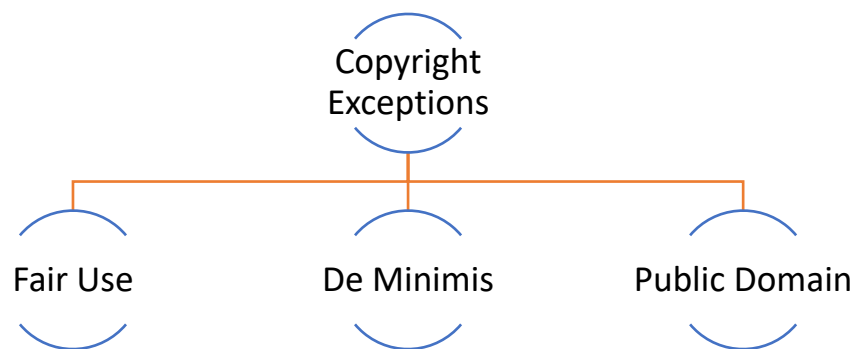
Yes, third-party videos and images can be used in your content, but only after you have obtained permissions or licenses to use such content.

15. How about music that I use in my content?

Social Media websites have music libraries that provide an extensive range of music that can be used by users. One does not require permission or license for the music sourced from these libraries. However, music sourced from any other source may require permission or license.

16. Are there any exceptions? Can I use third-party content without permission?

Yes, there are certain exceptions that apply to the use of copyrighted content without taking authorisation/ permission/ license. These exceptions are subjective in nature and need to be reviewed on a case-to-case basis.



Fair Use Exception

The Copyright law provides certain specific circumstances in which the fair use doctrine becomes applicable, such as the use of some work for the purposes of:

- Private or personal use
- Research work
- Criticism or review
- Reporting of current events and current affairs

De Minimis Exception

De Minimis Exception refers to using a very small amount of somebody else's content in your work that may be considered trivial. The exception was developed with a view to prevent people from initiating litigations on trivial violations and inundating the courts.

Work in Public Domain

Works for which the term of copyright has expired are considered to be in the public domain and can be used without any restrictions.

Fair Use and De Minimis Exceptions do not prevent the copyright owner from taking legal action against the violator, but rather it can be used as a defence when a claim has been made. It should be kept in mind that legal interpretation of these exceptions can vary drastically, and action should not be taken, hoping that one will be able to take refuge under these exceptions. These exceptions also do not apply if the content is being created for commercial and promotional use. To be clear, uploading video on YouTube only for monetisation would amount to commercial use.

The law and the legal precedents are settled on this position – if any Third-Party Content is used without permission for the creation of content for commercial purposes, such usage will amount to infringement of copyright.

Our recommendation would be to use the content that is your original creation and if Third Party Content is to be utilised, then (i) seek relevant permissions (in the form of consent/licenses), and (ii) give credit, provide source URL. You could also consider using the content available in the public domain, i.e., content for which copyright has expired.

17. What can happen if I use third-party content without permission?

The copyright owner/s can take remedial actions by way of injunctions and damages, and your standing on YouTube or any other social media platform may also be damaged (which may even result in your account getting suspended/terminated).

18. Where can I obtain permission for third-party content?

Unfortunately, there is no straightforward way of obtaining such permission, and it requires getting in touch with the rights holder.

You could look at approaching Copyright Societies for licenses and permissions. Copyright Societies are legal bodies formed under the Copyright Act with the purpose of collectively safeguarding and protecting the interests of copyright owners. If the copyright owner registers their work with a copyright society, then commercial management and enforcement against violation of work, rest with the society. Some prominent Copyright Societies in India (along with links to access their websites) are:

For music:

[IPRS – The Indian Performing Right Society Limited](#)
[PPL India | Play Music By The Rules](#)

For print and digital content:

[Best Copyright Society in India | Copyright Registration Service | IRRO](#)

Similar societies exist throughout the world and maybe known by different names in different countries, such as Collective Management Organisations in the UK.

An extensive (but not exhaustive) list of global copyright societies can be accessed from the following Wikipedia link: [List of copyright collection societies - Wikipedia](#)

Another option is to use royalty-free content available on some websites such as [When we share, everyone wins - Creative Commons](#) and [Wikimedia Commons](#) or obtain a license from paid content websites such as [Royalty Free Stock Photos, Illustrations, Vector Art and Video Clips - Getty Images](#).

As you may be aware, social media websites such as YouTube and Instagram have their own set of content which can be used freely by creators for their videos or content.

19. How is the permission given?

Permission or consent is given in the form of licenses. Depending on how the content owner structures their license, a one-time license fee or ongoing royalty may be payable to the owner.

20. What are the dos and don'ts for obtaining a license?

For consent/permission from copyright owners or copyright societies, the following points are to be kept in mind:

- i. Buying content (such as movies from YouTube movies or songs from iTunes) does not give the permission or license to use that content commercially. Such content is for your personal consumption only.
- ii. If you obtain a license for commercial use (for example, from Getty Images), the terms will specifically mention how you could use such content. Understand the license terms and the usage rights, i.e. whether one can make changes to the content? For how long can you use the image? Are there any restrictions regarding the commercial purposes

for which it can be used? Is a copyright notice/attribution required to be given etc.?

- iii. When taking consent from copyright owners, have it reduced in writing
- iv. Ensure you are getting permission from the correct owners. As mentioned earlier, the artist or performer that you see in a video or film may not be the copyright owner since the rights may lie with the producer of such work.

21. Are there any workarounds to getting permission?

Yes. Since copyright does not subsist in the idea and only in the expression, you could use the original idea and create your own original work from any existing idea. Or use content that is available in the public domain.

22. What do I need to do to stop misuse / copyright infringement of my work?

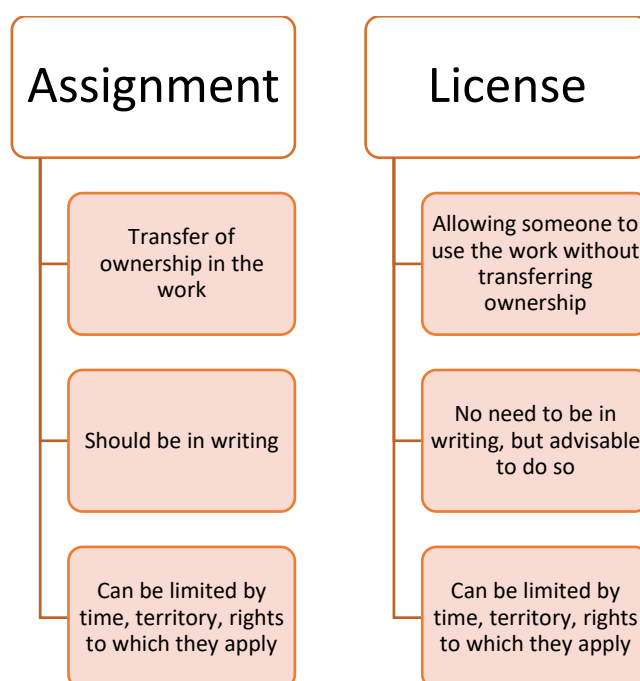
Social Media websites/ platforms have provisions for copyright owners to escalate issues where they feel their work is being infringed upon. The platforms have stringent policies on copyright infringement. For example – YouTube has something called a strike/ takedown notice. If the infringer continues to infringe, YouTube has the right to delete the account of such infringer. For more information on this, please refer to the section on policies in your social media handles.

Apart from the above, the copyright owner also has the option to send a legal notice (called a ‘Cease-and-Desist Notice’) directly to the infringer, with or without going through the process provided by the social media websites to tackle such infringement.

You will need to decide on the process to be followed based on what you are expecting and, on a case-to-case basis.

23. Are my rights transferable?

Yes, just like you can obtain a license for using third-party content, you can also license or assign your original content to third parties.



License

When you transfer some of your rights in the work without transferring your ownership in those rights, you are said to have given out a license. For example, if you have written a book, you could give out a license to one person for creating and commercialising the translation of the book and another license to someone else for adapting the book into a movie. Another example is if you have created an original video, you can grant a license to a third party to use your video on a particular website only or for a particular purpose only.

The document transferring such rights is called a License Agreement.

Assignment

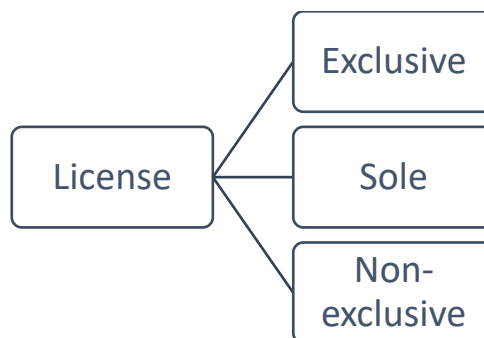
An assignment is equivalent to the sale of rights in the work. When you transfer all or some of your rights in your work, you are basically transferring the ownership of those rights in your work. Such transfer of ownership is called an assignment and is done by way of an Assignment Deed.

You can limit the assignment or license in your work in a number of ways, such as, by limiting:

- the time of use (for example, license for one year);
- the territory of use (for example, license for commercialising the work in India);
- the type of rights to which they apply (for example, license to develop a sitcom based on a novel); etc.

24. What are the various kinds of licenses?

Licenses can be categorised as exclusive, sole, or non-exclusive.



Exclusive License: Giving an exclusive license means that the person getting the rights (the Licensee) can use those rights to the exclusion of everyone else, including the copyright owner.

Sole License: A sole license means only the Licensee and the copyright owner have the right to exploit the work.

Non-exclusive License: A non-exclusive license means that the copyright owner may grant a similar license to others also.

25. Will I lose all rights to my work if I license it for perpetuity or assign it?

Not really. A copyright holder has the following rights in his work:

1. Moral Rights
2. Economic Rights

While Economic Rights can be licensed for perpetuity, moral rights continue to remain with the copyright holder.

26. What are my ‘Moral Rights’?

Moral rights are special rights of the author of a work to claim authorship in the work, even if the copyright has been assigned to someone else. For example, if your painting has been sold, you still have the right to be known as the painter of that work.

27. Can I criticise or review products and services in my videos?

Criticism and review of a product or service fall under the fair use exception. However, as the wise Uncle Ben advised Peter Parker in Spiderman, “With great power comes great responsibility” you too have certain responsibilities towards your viewers and followers.

As an influencer, you have the power to influence people’s decisions. Whatever you say could impact how your followers perceive a particular product or service. When you review or criticise a product or service, you are exercising your freedom of speech which is a fundamental right under the Indian Constitution; however, this freedom of speech is not absolute and has to be balanced against our fundamental duties. Keep these things in mind before posting content:

- Do not publish content that is harmful or offensive
- Use authentic sources, such as government websites or content posted by the product or service itself.
- Verify any statement that you are making about a product or service, i.e., do your due diligence before you review a product or service
- Include links to your sources of information

28. Are there any restrictions to the use of brand names/trademarks of others in my videos or posts?

Normally the brands do not object to the usage of their names/trademarks in content because it is a form of indirect marketing for them. However, if this usage results in tarnishing their image or results in their goodwill being diluted, then they could consider acting against such content.

29. What policies of social media platforms are applicable to me?

It is essential that you read through all the policies hosted by the social media platforms. Yes, it can be a tedious task and may end up being boring too but bear in mind that ignorance of the law is no excuse. As soon as you sign up, this amounts to implied consent, i.e., you have consented to the terms and conditions, including the policies by your action, which is the creation of an account and by clicking on 'I agree' or 'I accept'.

30. As an influencer, do I have to follow any guidelines?

Yes, you are required to comply with the guidelines formulated by the Advertising Standard Council of India (ASCI Guidelines). A copy of the ASCI Guidelines is attached to this

booklet. We have highlighted the relevant portions for ease of reference.

31. I have been approached for a paid partnership by a brand – what do I need to do?

Whenever you engage with any brand, please ensure the following:

1. The understanding between the parties should be reduced into writing in the form of a contract. The deliverables, timelines and commercials must be clearly defined.
2. Due diligence of the product/service to be promoted.
3. Compliance with the ASCI Guidelines and the Consumer Protection Act.

32. What are the important terms of a contract?

The following are the important sections of a contract:

- a. Deliverables and timelines – the deliverables to be mentioned in detail along with clear timelines. Extension of timelines in certain cases.
- b. Term and termination – Term of the agreement and extensions, if any, and termination rights of both parties, including provision for the termination in case of breach
- c. Licensing terms – nature of license and rights being licensed for a particular duration
- d. Consideration, taxes, payment terms – payment tranches and payment mechanism, interest on delayed payments
- e. Indemnity and limitation of liability – violation of third-party intellectual property rights (infringement of copyright) or breach of other laws may be applicable to either party, capping of your liability to a certain amount.
- f. Dispute resolution mechanism and jurisdiction – whether arbitration is to be preferred or not.

- g. Force Majeure – in case of occurrences beyond the control of parties, the recourse to be taken by parties without the imposition of costs on either party.

In certain cases, an organisation may want to execute a confidentiality agreement with you before proceeding with discussions on the deal. The provisions of the confidentiality agreement that you need to pay attention to are:

- a. Definition of Confidential Information
- b. Exclusions
- c. Survival clause
- d. Damages
- e. Jurisdiction

33. What are the laws governing or regulating social media influencers?

Social Media Influencers can be held accountable and liable under the following laws/regulations

1. **Copyright Act** – Relates to the protection of any kind of original work created, including literary, artistic, musical, dramatic, sound recordings and cinematographic films.
2. **Trademarks Act** – Relates to the protection of brand names.
3. **Consumer Protection Act** – Relates to the protection of rights of the consumers.
4. **Indian Penal Code** – Relates to criminal offences and the punishment for such offences.
5. **Information Technology Act** – Relates to data protection, privacy and information security.

34. Do I have any rights as a performer?

Yes, if you give any live performance, such as a talk, speech, dramatization, singing, recitation, etc., then the performer of such live act gets a special set of rights in the performance called 'Performer's Rights'.

Performer's rights are separate from and in addition to rights of the author of the underlying work. For example, if you sing a song on stage, the rights of the producer of the original song will remain intact while you, as a performer of that song, will gain Performer's Rights which include:

- Right to make a sound recording or visual recording of the performance with right to reproduce such recording, issue copies of such recording, communicate it to the public, selling or renting the recording, etc.; and
- Right to broadcast or communicate the performance to the public

35. I have promoted my social media handles extensively. Do I have any rights in my social media handles?

You have rights in the content posted on the social media handles. The primary rights to your social media handles rest with the platform hosting your handle. The platform reserves the right to delete your account in the event of infringement or violation of the law of the land.

Having said that, if you promote your social media handle (or your name) extensively, it may be considered a brand name in itself, and that could allow you to protect your social media handle (or your name) as a trademark.

36. What is a trademark? How is it different from copyright?

A trademark is any kind of mark (including any colour, shape, sound etc.) that identify and distinguishes goods and services of one person from those of the other.

While a copyright protects original content from being copied, a trademark protects brand names. The purpose behind protecting trademarks is to prevent confusion among the consumers concerning the origin of a product or service.

37. How do I protect my brand name/trademark?

You can own a trademark without registering it. As soon as you start using your brand commercially, you become the owner of that brand name. However, such ownership gives you only limited rights in the trademark (called common law rights).

You can register your trademark with the Indian Trademark Office by filing an application. Registration provides you with statutory rights in your trademark. Registered trademarks offer stronger protection and are easier to enforce.

38. I post my content on different social media platforms. Do different platforms follow different copyright policies?

Yes, each and every social media platform has a policy on copyright. These policies educate their subscribers/members about what intellectual property rights are and provide a recourse for copyright holders to act against an infringer.

39. I intend to set up an entity; however, I am not sure what kind of entity will work for me – company, sole proprietorship, partnership?

We recommend that you start out as a sole proprietor, and then, depending on the growth, you may consider transitioning into a company. [Click here](#) to see a list of various features of different types of business entities for your ease of reference.

40. I have been approached by agencies that connect influencers with agencies. What do I need to bear in mind for such partnerships?

- a. Do your due diligence on the agency
- b. Ask the relevant questions
- c. Enter into a contract – ensure you are not locked in for the entire duration of the contract.
- d. Do quarterly or bi-annual reviews of how the partnership is contributing to your growth.



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HAVE MORE QUESTIONS?

We understand that your circumstances and questions could differ from what has been dealt with in this booklet, or you may have other legal needs. To get all your questions answered, set up a **free 30-minutes online consultation** with us by filling in the below query form:

[The Influencer's Code | BRB Legal \(brb-legal.com\)](#)

ABOUT US

BRB Legal, over the years, has evolved and kept pace with the emerging needs of the times. With a futuristic vision, BRB Legal is now a pioneer in practice areas that pertain to innovations, creations and doing business in this modern time, including, among others, intellectual property rights, cyber laws, media and entertainment, domain name disputes and commercial laws. BRB Legal offers its services through its office in New Delhi.

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Vanessa has completed her LL.B. from Faculty of Law, Delhi University in 2008 and Bachelors (Honours) in Sociology from Delhi University in 2004.



Type of Entity	Registering Authority	Legal Status	Member's Liability	Annual Filings	Annual Statutory Meetings	Minimum Number of Members	Survivability
Sole Proprietorship	No formal registration required	Not a separate legal entity. Promoter is personally liable	Unlimited liability of the proprietor	No requirement to file annual report with Registrar of Companies (ROC). Income Tax Return can be filed based on the income of the Proprietorship	No Requirement	Proprietor is the only member	Dependent on Proprietor of the business
Partnership	Registration is optional	Not a separate legal entity Partners are personally liable	Unlimited liability of the partners	No requirement to file annual report with ROC. Income Tax Return can be filed based on the income of the Proprietorship	No Requirement	2 members	Dependent on the Partners. Depending on the partnership agreement, it may get dissolved on the death of a Partner. It can be voluntarily dissolved by the partners
Limited Liability Partnership (LLP)	Ministry of Corporate Affairs (MCA) under the Limited Liability Partnership Act, 2008	Separate legal entity registered under the LLP Act, 2008. Partners aren't personally liable	Limited liability of partners, only to extent of their contribution	Annual Statement of Accounts & Solvency and Annual Return to be filed with the ROC each year. Income Tax Return also to be filed for the LLP	No Requirement	2 members	Not dependent on the Partners. It could be dissolved only voluntarily or by an Order of the Company Law Board
Private Limited Company (PLC)	Ministry of Corporate Affairs under the Companies Act 2013	Separate legal entity registered under the Companies Act, 2013	Limited liability of the shareholder, only to extent of their share capital	Company has to file Annual Accounts and Annual return with the ROC each year Income Tax Return also to be filed for the PLC	Requirement to conduct Board and General meetings periodically	2 members	Not dependent on the Directors or Shareholders. Can be dissolved voluntarily or by Regulating Authorities
One Person Company (OPC)	Ministry of Corporate Affairs under the Companies Act, 2013	Separate legal entity which is registered under the Companies Act, 2013	Limited liability of the Director and Nominee Director, only to the extent of his/her share capital	One Person Company has to file Annual Accounts and Annual return with the ROC each year. Income Tax Return also to be filed for the OPC	Requirement to conduct annual statutory meetings	1 member	Not dependent on the Director or Nominee Director. Can be dissolved only voluntarily or by Regulatory Authorities