

**Legal Compliance for Incorporating Startup**  
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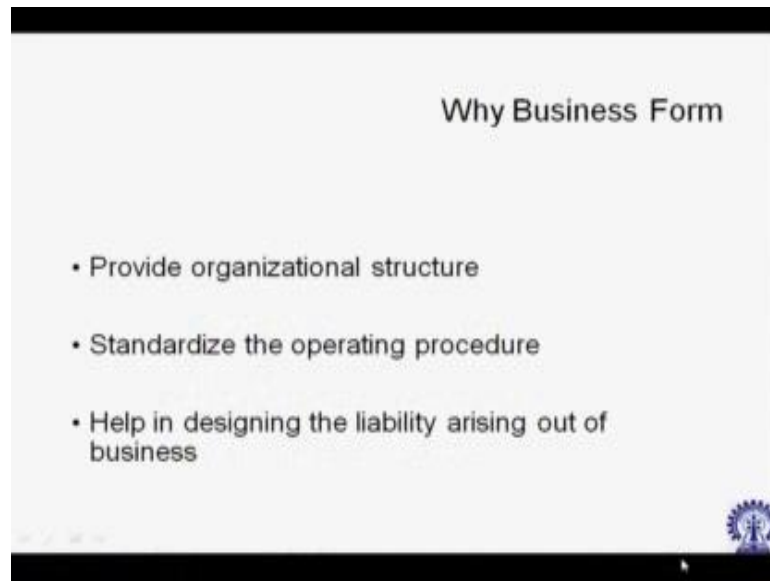
**Lecture – 01**  
**Why We Need a Business Form for Start-up**

I welcome you to the course Legal Compliance for Incorporating Startup. In this particular course, I am going to talk with you how to incorporate your startup rather what should be the appropriate form of business for your startup. Now success of your start up not only depend on how bright idea you have, but also what type of business form you are choosing that is also equally important. If you are not choosing the bright type of business form then it might hinder your development process or the business growth. So, objective of this particular course is, to take you through how you are going to find a right kind of business form for your startup.

In this course, I am going to talk about the fundamentals which include why you need a business form, then how to choose appropriate business form then I am going to give you some kind of comparative analysis between these particular available business forms. Then I will spend some time with you on how to incorporate these particular business forms and ultimately I will talk with you about the legal compliance and financing of your business form. So, at the end of this particular course you have some compressive idea about the choosing of your business form or the organizational form which you are going to use for the purpose of your business.

Now in this particular lecture, I will start with the fundamentals and to be more specific; I will talk with you why we need a business form for startup. These three basic reason for which we should choose a business form, one is provide a organizational structure.

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Second is standardizing operating procedure and third is helping in designing the liability arising out of business. Let me explain to you one another, first one is; provide organizational structure, now if you want to interact efficiently with the outside world then you need to have a organizational structure because without the organizational structure, nobody will be interested to engage with you in any kind of business and organizational structure give you kind of transparency which one wants from the outside while they are going to enter into a business transaction and if you are a transparent organization, if you have a proper organizational structure in place. It basically attract many investor to your organizations, it might facilitate you to get your respective customer, it will facilitate you to access the different market segment, it will help you to raise further capital so much so forth, so you need to have a proper organizational structure for your business.

The second one is standardize the operating procedure, if you are choosing a particular organizational form, it basically helps you to develop a internal operating procedure and that helps you in responsibility distribution, type of organizational forms you wanted to pursue, type of efficiency you wanted to inculcate within your organization, type of responsibility you want to distribute amongst the people of your organization so much so forth and the last one is most important, is designing the liability.

Now, every business one or other way round, go through the different kind of risks and these risks brings the liability to those who are managing the operation of the business. So, in a particular sector, the business is more risk born, which we said that there is inherent business risk in a particular sector. Some of the risk which is manageable, you can (Refer Time: 06:53) some of the risks comes of a sudden. So, your organization form should be such, which will naturally able to manage this particular risk, so that it can minimize the liability of those people who are managing that particular organization.

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Having said that, I am now going to talk with you different available business form in India and then in my next lecture I am going to talk with you, how to choose a appropriate form of business for your own startup. So, let me discuss with you what are the forms available with us and then I will detail out these particular form one after another. The first one is the proprietorship, then partnership, limited liability partnership, cooperative, society, one person company, private limited company, public limited company, public listed company and the trust.

In last few years, the government has taken a lot of initiative to introduce some simplified business form, to facilitate the startup as well as SMEs, like government has introduced the concept called limited liability partnership. Though this particular concept

is not unique as a business form, this was developed in other country a long back and they successfully used this particular organization in the different service sector, but in India this was not been used and there was a long demand to introduce this simplified form of business. So, let me start with this proprietorship; proprietorship is possibly the most simplest form of business, where the person who wanted to carry the business he brings the fund or capital or arrange the capital for that particular business, he carry out the business by his own wisdom with the support of necessary people whom he employed or she employed and ultimately if the business faces some risk and because of that, if it raise the liability then that particular liability absorbed by the person himself.

So, this kind of a business is good for a small business, this is good for that type of business where the business risk is much lesser. Another sometime I will say where the capital intensity is much lesser whereas, when you talk about the partnership here in there is a more than one person and the number of person come together and decide to carry out the business with the common objective. There can be formal agreement between themselves or the law may inferred that, they have a agreement between themselves based on certain circumstances and those people who are joined the business they agreed between themselves who is going to manage the business, how much capital they are going to bring each other to this particular business, what will be the model of profit distribution and if the business brings a liability, how they are going to distribute the liability among themselves.

So, partnership is a little advanced form of business than that of a proprietorship because if you require a more capital, you need more people to control and if there is a risk in that particular business, there are more people to share the liability. So, you might have seen different traders use to form a partnership, different service provider used to form proprietorship. Like if they are providing the legal service, they are providing the accounting service, they are providing the advisory service so they generally use to go for a partnership because you know giving the service, you have a very limited liability, and you do not have a much liability.

We do not have a much case in India, for keeping a wrong advice which is in legal terms known as not exercising the care and skill, while giving the advice. So, the partnership

use mostly in our country for the service sector, but it is not that they have not used in case of the production form. Now, the next one is limited liability partnership, this is a new business form and simplified business form and which stands in between the partnership and a company. So, what you found in these particular business forms, that is the some characteristic of partnership are there and there is some characteristic of the companies are there. Now, what is the characteristic of partnership, it is a simple to form this particular business organization because those people who wanted to carry out this particular business through this particular form, they have to enter to its agreement, they have a limited liability towards the outside which is not there in case of partnership, in case of the partnership partners are personally liable for the debt of the firm.

So in case of the partnership, if it enters the debt, then the common property or partners property should be used for paying back that particular debt and if you are unable to pay that then you need to pay from the personal asset of the partners, this used to be a problem for those people, who want to constitute a partnership, but that particular problem is taken care in limited liable partners and this is a necessary characteristic of a company; that means, those people who are making an investment in the limited liability partnership, their liability is up to the investment which they made into that particular limited liability partnership, not beyond that.

So, this encourage many people to incorporate the business and to carry the business where the risk factor in the business is very high or where you need to manage the liability in a frequent intervals. So, LLP is a quite advanced form of a business organization presently available in India and you will be happy to know that, there is a many small business organization now incorporating as a LLP, many start-up are incorporating as a LLP and at the same time, many existing business are converted into LLP.

So, LLP can be one of the very good forms of business for your start up, but again I will not suggest you a blanket manner that you should only choose the LLP. While you are going to choose the organizations, there is several factor you should consider for choosing of your right business form or organizational form which I am going to talk with you in my subsequent lecture. The second one is a cooperative and you might have

heard about that there is a lot of success in case of the cooperative like Amul, Taste of India, is one of the biggest cooperative in our country and very successful, but at the same time there is a many cooperative which are not able to carry out their business in a very successful manner. The advantage of the cooperative is again, that number of people can join and then those people who are joining into this particular business form, their liabilities are limited up to their contribution into that particular business form.

So, the cooperative are also a very good form of business, depending on type of business which you wanted to enter into and type of capital which is required for your business, you can also choose the cooperative as a business form. The second is a society, in India society is not use a lot for the purpose of the business, but there is an example where the society has been used for the purpose of business mainly where you wanted to carry out the business, but in a non-profitable manner, but please do remember this particular fact that non-profit making does not mean that whoever is working for that particular society, they are not going to get any remuneration for their work.

So, where you wanted to promote some kind of a research and development or a particular course or you wanted to address the social innovation for the social problems or you wanted to address some upcoming problem which the society is facing. The society is the very good form and another good thing in case of the society, your liability also limited; that means those people who are making an investment into the society, their liability is limited up to the investment which they are making in the society. So, if the society incur the more liability in the course of business, the member of the societies are not responsible, so it is a society who has to make it good.

The next option is one person company, this is another unique innovation of a recent time; to simplify and to encourage, many businesses to be incorporated and carry those particular businesses in a more efficient manner. So, one person company is a quite unique in nature wherein; it is like a proprietorship, one person can incorporate his business, but the person who is incorporating the business, unlike the proprietorship his liability is limited to the extent of the contribution which he is making in the capital of the company. So, what actually happen in these particular case, he has a every liberty like a proprietorship; incorporating his business is little complex in a proprietorship, but as

simple as the proprietorship to run the business, at the same time he has a protection against the third person or the liability which might arise because in the course of business and he can manage his liability.

So, if the business model or the business which you are you know managing, which is the risk oriented; in that case the one person company is a one of the biggest solution, so it is a very simple, at the same time it gives you a very good protection against the business liability. So, if your business is not capital intensive but risk oriented, then the one person company is a very good solution or very good business form for your startup.

Second next thing, I will talk about is the private limited company, in case of the private limited company, there is a number of people who can join into that particular organization, the minimum requirement is 2 and now the maximum can go up to 100 and they can bring their capital, they can have own setup amongst themselves, they can drop their own Article of Association or Memorandum of Association, they can manage their own company and at the same time the best part of it is, it has a limited liability of the members who have brought the capital into that particular company.

So, if you are incorporating your startup as a private limited company, then being a promoter you have a limited liability or your liability extend up to the capital which you have contributed even though during the business, the business incurred the more liability then whatever the capital which you are bring into that particular company itself. Now in case of a public limited company, if you wanted to have a bigger organization in the future, if you wanted to go or scale up your business, if you have a larger ambition, if you wanted to make your organization bigger, then you should choose a public limited company or even you can choose any other form of business, like you can choose it as a LLP or a one man company or a private limited company and later on you can convert your business into a public limited company. Now what is the benefit in case of public limited company, important benefit in case of the public limited company is raising the capital from the public at large.

So, you can access the capital from private pressmen and a large number of people, to address the steady financial need which you might have as a startup. Some of the startup

are capital intensive; that means you need to periodically finance those particular startup to keep the growth intact, so in those particular case my advice will be, you should incorporate your startup as a public limited company.

Now public listed company is a second phase of a public limited company, if you are interested to go for (Refer Time: 26:22) and you wanted to make your company very big, then you should think of a public listed company. You are not required the public listed company to be incorporated at this stage of startup, but I thought to talk with you relating to the public listed company because if you have grown up tomorrow and if you are ambition to become a big organization, then you should go for a public listed company and in India; the trust also use as a form of business.

In other country, the trust also known as a foundation and generally people think that the foundation means they should be used for the charitable purpose, but in India you will find that there is a many holding companies are there or holding organization are there, which are of a trust or even the trusty can carry out the business for the benefit of its beneficiaries, but trust in generally not use as a business form for the startup, but I thought to draw your attention about the trust because tomorrow for addressing some of your business need, you need to incorporate the trust as a parallel organization of your organization or to support your organization. So, that is the reason I thought to talk with you, the trust also as a business form. We are going to detail it out in our subsequent lectures so that it might help you to decide that which form you should choose for the purpose of your business.

Thank you.