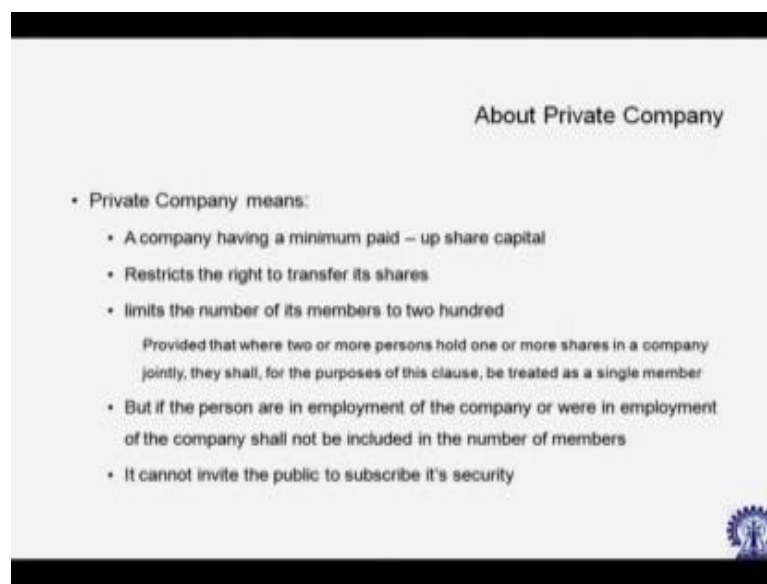


**Legal Compliance for Incorporating Startup**  
**Prof. Indrajit Dube**  
**Department of Humanities and Social Sciences**  
**Indian Institute of Technology, Kharagpur**

**Lecture – 12**  
**Law Relating to Pvt. Ltd. Company**

I welcome you in twelfth lecture relating to Legal Compliance for Incorporating Startup. I was in the module called incorporation of one person, company private limited and public limited company. Now, in this particular module, I will concentrate more on law relating to private limited company. Now, yesterday I had talked with you one person company.

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And I have told you that this one person company is also a private limited company, but one person company has certain different feature than that of a private limited company. To put it in other way round, in case of the one person company, the compliance requirement is lesser even than of a private limited company. So, private limited companies compliance is more than a one person company and at the same time this is also a formal structure or formal organizational setup, and it you are required to comply number of provisions under the companies act, but please do remember that even in case of the private limited company the compliance requirement is lesser than public limited

company and in my subsequent lecture I will going to deal with law related to public limited company.

Now, before I go further, let me draw your attention about certain specific characteristic of a private limited company and which is a distinguishing factor from a public limited company. Now, in case of a private limited company, you need to have a minimum paid up capital. Now, paid up capital means which you need to raise during the time of incorporation that means, at the time of incorporation, you need to specify that what should be the capital of the company with which you are incorporating and how much capital are subscribed by those people who are participating in the incorporation of the company that means, who are basically the promoter.

Initially, once the company incorporated they became the member of the company. Now, previously under the previous act CA 1956 that means, 1956 companies act, the minimum requirement for a private company was 1 lakh of rupees, but you will find there is a recent amendment and in that particular amendment that specific requirement is withdrawn and it has said that whatever has been specified. Now, the ministry is kept it open for a different specification to be prescribed at different point of time. So, that it can adjust this structure of the company based on its industrial policy or wherever it will prescribe that a particular type of organization one should float for the purpose of entering into the particular segment of the industry.

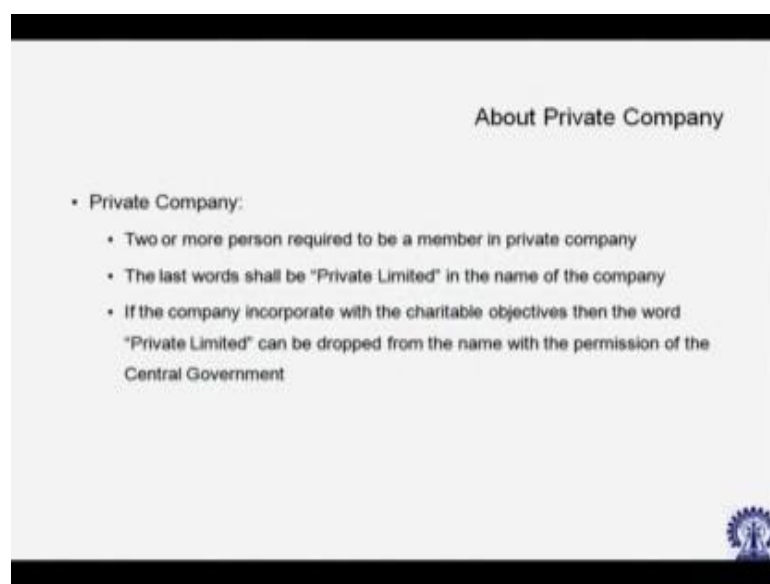
Similarly, in case of the private limited company there is a restriction on transfer of the shares which you will find quite unique with the private limited company and this is not so in case of public limited company. So, we put it here we can also mention in this particular juncture that this is also known as the preemptive right that means, whoever is the member of the public limited, private limited company you need to offer them first, before you transfer this share to the other person, who is not an existing member of a private limited company. So, in case of a private limited company there can be a restriction of the shares and you can have a specific provision in what circumstances.

That share can be transferred at the same time the law also prescribes, so that you cannot transfer the share outside the existing member until and unless there is a certain

condition prevail or you qualify certain conditions. Now, it is also prescribed the limit of number of members, it says that you cannot have more than 200 members. Now, under the previous act it was 50 that means, under Companies Act, 1956 the maximum number of the member of a private company was 50, but under the present act it is increased up to 200, but herein you should remember that if two person is holding the same share or two person is holding jointly the same share then in that case for the purpose of this law, they will be treated as a one person.


So, when you are counting the number, if one share is held by two persons then that particular share for the purpose of counting the number of member, it will be only one. Now, if any person who is in employment of the company or was in employment with the company and continued as the member, then for the purpose of counting the total number or maximum number they will not be counted. So, employee of a private limited company who is a member of the company, they will not be counted as a member of the company. Now, at the same time the private limited company cannot invite public to subscribe its security. Now, there is some exception has made to it and I am going to describe this particular thing in detail under this particular present act, in the subsequent part of my lecture.

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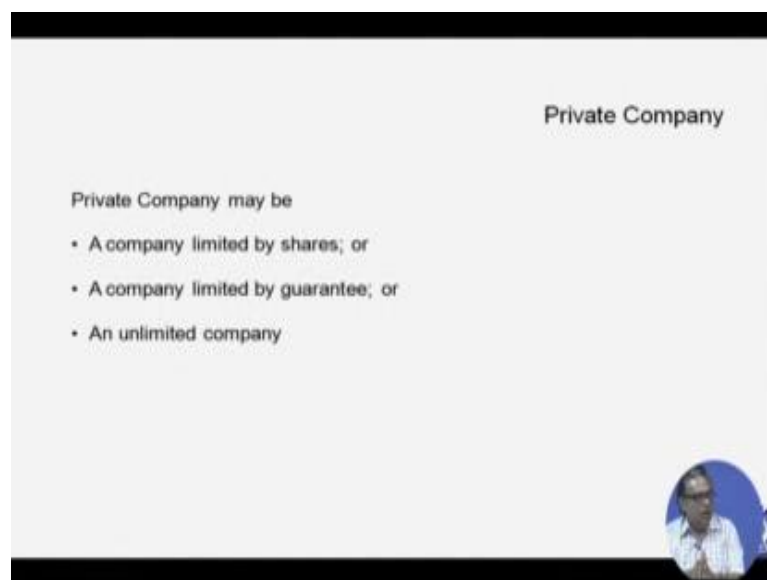
About Private Company

- Private Company:
  - Two or more person required to be a member in private company
  - The last words shall be "Private Limited" in the name of the company
  - If the company incorporate with the charitable objectives then the word "Private Limited" can be dropped from the name with the permission of the Central Government



Now, to incorporate a private company you need at least two persons or there can be more than two persons to incorporate a private limited company. Now, in case of the private limited company, you should specify the word private limited at the end of the name of the company so that means, to identify a company or to easily identify the company; the companies name should tag with the word private limited. Again, that if the company incorporated with the charitable objective then in that case this word, private limited can be dropped from the name of the company. Now, as I have discussed with you in case of one man company, similarly a private limited company can be 3 types that means, it can be limited by shares, it can be limited by guarantee and it can be unlimited.

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Now, when we are talking about the shares, the liability of the members is limited up to their contribution in the shares; share capital of the company. So, for example, if somebody subscribes 10000 shares of the company then in that case his liability is limited up to the 10000 shares and the value of the 10000 shares might be 10 into 10000. So, that is his liability in terms of monetary value.

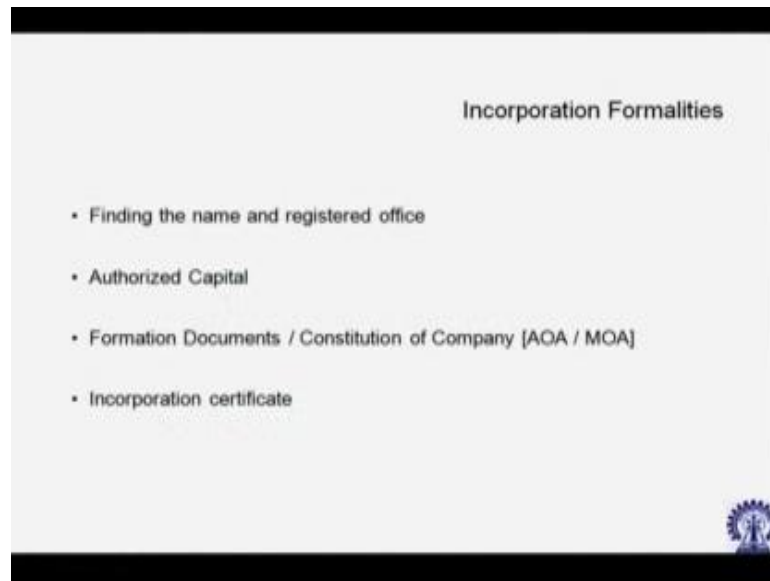
Now, when we are talking about the guarantee it means that if the company incurring losses during the carrying of his business then in that circumstances the member of the

company may extend particular amount of guarantee to the loss of this particular company in addition to the share contribution. So, at the time of the incorporation the member might say that, they are ready to take the guarantee of 10000 rupees. So, in the circumstances if the company is unable to make the liability or the losses then in that case the member will further contribute 10000 rupees to towards the liability of the company.

Now, there can be a private limited company which is unlimited that means, the member will have an unlimited liability. In that circumstances the member will have a joint and a several liability that means, members not only liable to the debt of the company, but the assets of the member may be utilized for making good the debt of this company that means, company has to pay whatever the debt it has and if he is unable to fulfill all the losses or the debt to its creditor then member will pay it from their own assets.

So, this kind of a company can be incorporated, if you look into the normal conditions or the majority of the company then you will find the majority of the companies are limited by shares. There is a very few unlimited companies are there at the same time. There is also very companies are there which are limited by the guarantee there is also possibility that company can be incorporated with limited by shares as well as a guarantee and if you look into the companies act, you will find there is a specific style of memorandum of association and article of the association provided for this kind of company with a limited liability as well as limited by guarantee.

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Now, let me take you to next aspect relating to the incorporation formality. I am going to deal with this particular incorporation formality in the subsequent lectures in detail, but nevertheless, which I have indicated also in one person company, let me do it for this private company too and you will find that these formalities are almost similar in case of one person company private limited company as well as public limited company.

So, in case of a private limited company, the first important thing is that to find out the name of the company because it might so happen you want a particular name of your company or your startup and that particular name might not be available for the incorporation of your startup because according to the law the name which you are choosing it should not be deceptively similar with existing business name trade name or name of the company or name of any other organization so that means, generally you will find the business identify by the name and in that circumstances people those who are contacting with you.

They should not be at any circumstances misleading by the name of your startup or your private company like you there is a name of the company is Infosys. So, info the moment we use the word Infosys, we indicate a particular company or particular brand, but if you write something like Infosys systemic company limited then by adding this systemic you

might not get that particular name because it might be confusion in the mind of the people that is it Infosys subsidiary or are you related with Infosys. So, it will discourage not to take that kind of a name. So, you will find that now this particular process is made quite easy.

You can simply go to MCA website and then you can click on the link relating to finding of the name and then you can write the name on the box and then search that that particular name is available or you to offered you to choose for registration or not. Now, whatever the condition is in case of choosing the name you are required to give more than three names while you are applying for getting the name from the registrar and it generally takes some time when the registrar of the company is going to grant them this particular name to you.

So, choosing the name for your company is one of the important process then you need to decide that what should be the registrar office of your company that means, where people should communicate with your company or in which address people should communicate and the registered office is important from the many aspect because many law applies based on your position of the registrar office like, you might be subjected to particular type of taxes, you might be subject to particular type of operation of law relating to accessing the capital, you might be subjected to the litigation because of your based on your situation of the registrar office.

Then you might need to hold your general meeting where your registrar office is. So, registrar office is a very important issue again. So, you need to find out or settle down this particular registrar office issue. Now, this is this is important to mention here. If you want to move your registrar office from one place to another place within district then in that case you need to notify that particular thing to registrar, if you wanted to move within a state again then you have to call your general meeting to put this particular matter before them and to take a adequate consent from them and if you want to move from one state to another state then in that case you need to have a general meeting.

At the same time you need to notify both the registrars that means, out the registrar from where you are moving and the registrar where you are going. Now, I believe who is a

registrar? I have explained to you in my last lecture, registrar means registrar of the companies and the registrar of the companies is appointed by the central government. So, registrar after looking into the general meeting consent they might give you this particular permission to move from one place to another place. So, registrar office is one of the important thing and you need to mention this registrar office in the constitution document or formation document of the company which is popularly known as memorandum of association or article of association.

Now, in case of a private limited company, you need to decide your authorized capital now authorized capital you need to mention in the memorandum of association an authorized capital is such which company can raise in its lifetime until it has been changed by the general meeting that means, if you are registering a company with the 2 lakh of rupees authorized capital then in that case company can raise maximum 2 lakhs as authorized capital. Now, this is also important to note that as much your authorized capital will be whenever you are doing the registration of your company you needs to pay that much of registration fee.

So, it is always advisable that you should not over capitalize that means you should not put a very big figure in your authorized capital at the same time you should not put less authorized capital in your capital clause that you need to go for amendment very quickly because amending the authorized capital is quite tedious job. Now, as I have discussed with you in case of a one person company, this is also important here that for private limited company too you need to have an article memorandum of association and article of association. Now, I have told you that in memorandum of association most important part is that it includes the objective clause; that means, on which of the subject the company can carry out the business.

Whereas in case of the article of association, you basically provide what are the matter that company need to handle for the internal management I will detail out this particular two document in my subsequent lecture. Now, once you complete all this particular formalities you put all this particular document to the registrar of the company it can be done online or you can take the help of the professionals who will deposit, the AOA, when deposit that who will the who are the people who are going to be the director of



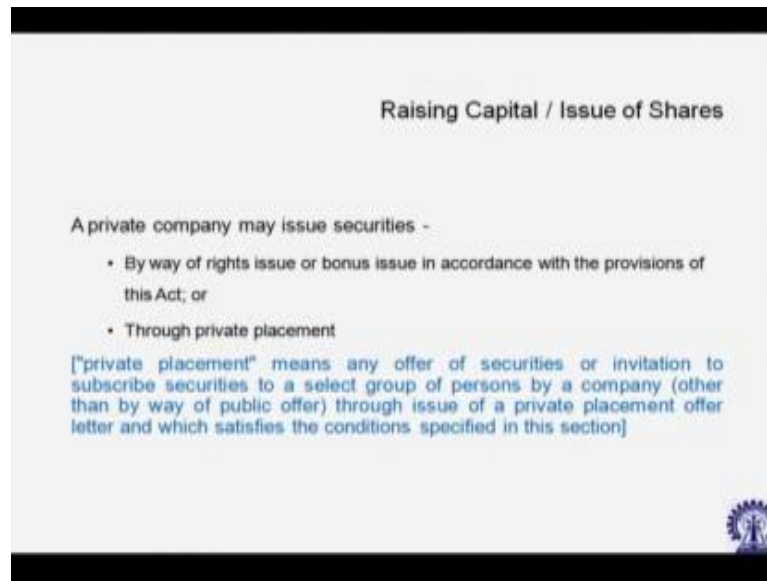
this particular company is if there is any further compliance is required in that particular sector that particular certificate and all this thing need to be certified by either advocate or chartered accountant or company secretary and then you can submit this particular document to the registrar for the verification. Now, once the registrar will scrutinize this particular document.

and satisfy that all the matter is complied with registrar is going to issue a certificate incorporation certificate and please do remember this incorporation certificate is a birth certificate of the company. So, whenever you are going to refer any any of the regulatory issues you need to refer this particular date of incorporation because this is one of the very important debt which you need to always keep it right and you need to preserve the incorporation certificate properly in your registrar office of the company now there is a certain statutory provision if we i thought that is important that you should know if it is a if if there is a subsidiary of if the private company is a subsidiary of a public company then it will be deemed as a public company reason is.

Whatever the money which has been infused in a subsidiary company by the public company is basically the public money because public companies generally raise the public money through the public placement or the private placement and that is the reason it has been law has been you know law has been drafted like this the subsidiary of a private company is a deemed public company. Now, private company has also right as I have talked about; talked with you before that they can they can incorporate the restriction relating to the transfer of the share. At the same time the statute also give this condition in the statute itself that you can impose a restriction relating to transfer of the share in case of a private company.

Now, in generally the private company is only allowed to raise the capital from its own member. So, the private company can issue the right issue, right shares as well as the bonus shares to its existing employee, but under this present companies act that is CA, 2013, companies act 20013, they have incorporated a specific provision for a private placement.

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**Raising Capital / Issue of Shares**

A private company may issue securities -

- By way of rights issue or bonus issue in accordance with the provisions of this Act; or
- Through private placement

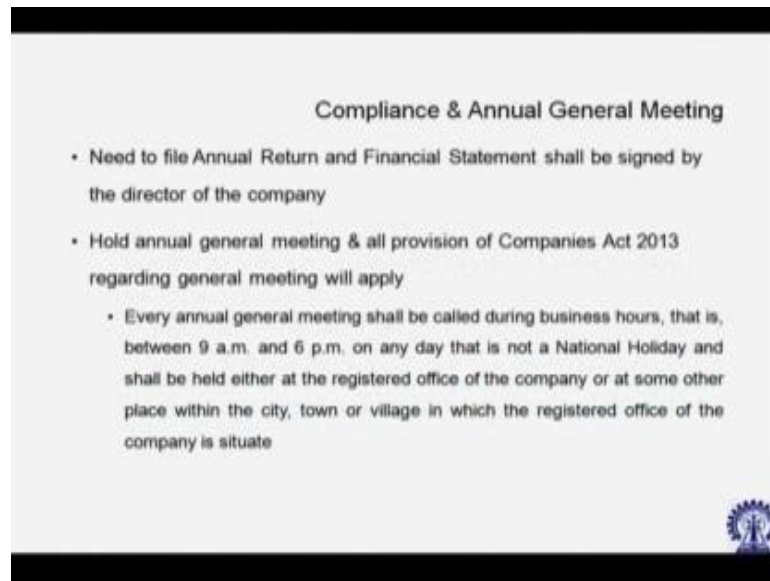
["private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section]



Now, the private company can also participate or raise the capital through the private placement, and the private placement means the security has been invited a selected group of a person by the company other than by way of public offer through the issue of the private placement offer letter which satisfy the condition specified in these particular section that means the section which is or the provision which is dealing with the private placement.

So, to put it in other way round if your company have a clientage that means, number of people who basically purchase your product or there might be a suppliers or there might be creditors of your company or your startup then you can also ask them to subscribe the shares or you can you can issue the shares to these particular people. So, these are the target group of people or it might. So, happen that if you if you are taking a professional service like you have a chartered accountant for looking after your accounts or you have a lawyer to look after your legal issues then you might even ask him to contact his clients who might be interested to subscribe the shares of your company, this basically to put in other way round or a private placement.

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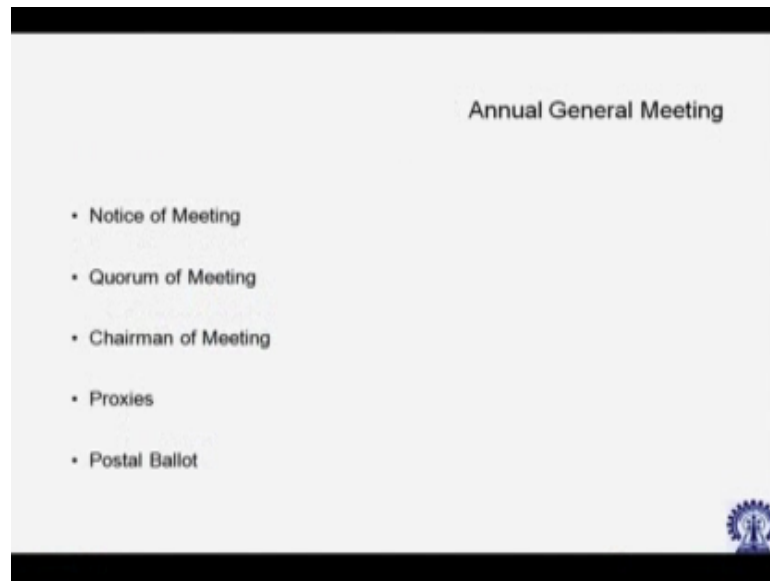
- Need to file Annual Return and Financial Statement shall be signed by the director of the company
- Hold annual general meeting & all provision of Companies Act 2013 regarding general meeting will apply
  - Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate

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Now, let me talk relating to the compliance and annual general meeting in case of a private company and you will, as I have told in the beginning itself the compliance requirement in case of a private limited company is little higher than one person company and for that matter the general meeting too. So, every company need to file annual return as well as the financial statement signed by the directors in every end of every financial year and there is a several matter which you need to state in the annual report itself which includes the directors report which includes the ownership pattern which include the disclosure relating to the different issues at the same time which also talks about.

The profit and loss account of that particular company for that matter the financial health of the company, now these disclosure requirement in case of a private company is not as stringent as in case of a public company; I am going to speak more, when I will talk with you relating to the public company, but for that matter the public private companies disclosure is more than one percent company, but in case of a private company public company it is much more than this. Now, again you need to hold a general meeting and in every general meeting need to be hold within 9 AM to 6 PM in any day which is not a holiday; national holiday and where who and it should be in the same place where the registrar office of the company.

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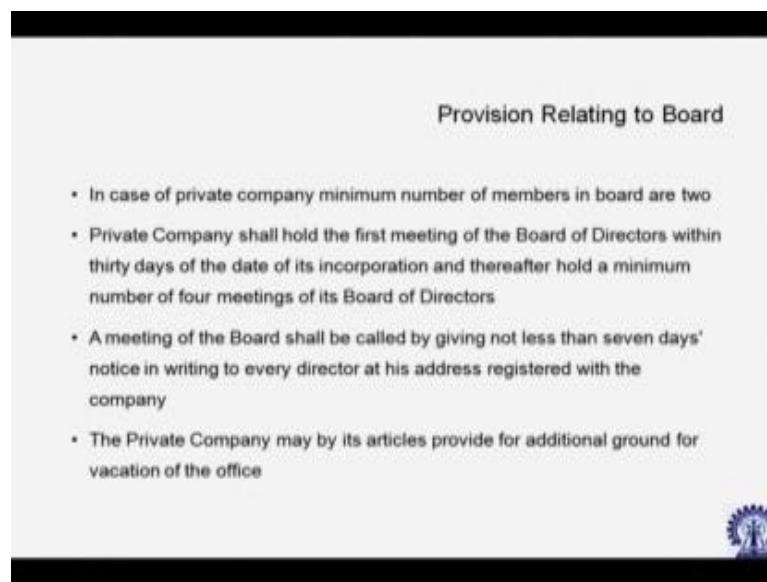
Now, in the annual general meeting there is certain specific thing, we should keep in the mind that means, for the annual general meeting you should have to give a notice for clear 21 days and in the notice, you need to specify that what are the business which you are going to transact in the annual general meeting, statutorily there is a couple of business which is specified like appointment of the auditor appointment of the directors and then considering financial report of the company and if there is any other matter which is lead to, which is called as a special matter to be listed into that particular notice itself.

Now, there should be a quorum of the meeting and you can specify what should be the quorum in the meeting, in your A of A. At the same time, you will find the law also provides the quorum for the meeting. So, it is whoever is present and they basically form the quorum of that particular meeting itself. Now, in case of the chairman, generally the person who are present, one of them can be appointed as the chairman, but nowadays you will find the chairman are generally a designation which company always care always carry.

Now, the same chairman, who is the chairman of the board or somebody is appointed as the chairman of the company who chairs the board meeting as well as he chairs the

meeting of annual general meeting and both the cases it is recommended that the person should not be a executive director of that particular company, but he should be a non executive director this provisions are quite stringent in case of a public limited company, but not, in case of private limited company. Now, in general meeting the people can be represented by the proxies that means, the shareholders can be represented by the proxies, means you are authorizing another person to go and attend the meeting on your behalf, but there is a certain restriction relating to the voting by the proxies.

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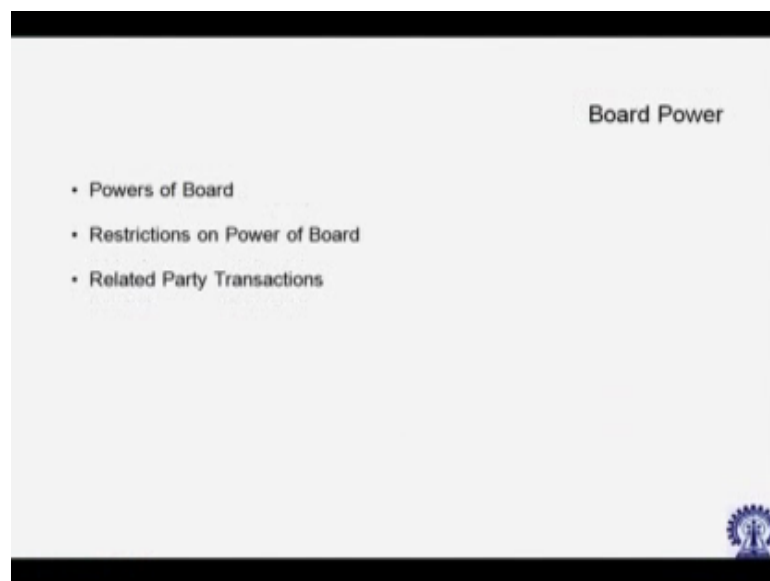
Similarly, now there is a change relating to the casting of the vote now, you can cast the vote through the postal ballot that means, or any electronic media. Now, postal ballot means it can also and electronic medium that means, through the website also you can cast the vote, but there should be some kind of authentication procedure and you have to follow that. Now, there is a provision relating to the board, in case of a private limited company there should be two member in the board private limited company need to hold the meeting, first meeting within 30 days from the date of incorporation and then hold the meeting in every 4, every 3 months; that means, there should be 4 meeting in a year.

Now, a meeting of the boards had been called by giving not less than 7 days notice and a private company may by its article provide the additional ground of vacating the office.

Now, let me tell you this particular thing in generally the law provide a long list relating to vacating office by the director as well as the qualification of the director now qualification as well as vacation of the office are same for all those companies either it is a one person company or a private limited company or public limited company, but in case of the private limited company it is most of the time overlooked and only in very accurate conditions you generally apply this particular thing. So, if you are become insolvent or you are become insane or if you adjudged as a insolvent or you have done some kind of a offences under the criminal law then in that case you are a disqualify.

Similarly, if you have failed to pay the dividend or if you have you know not complied with the regulatory laws then in that case also you are disqualified, but in addition to that private company can specify further ground for the disqualification of the director. This is quite a specific provision for the private company.

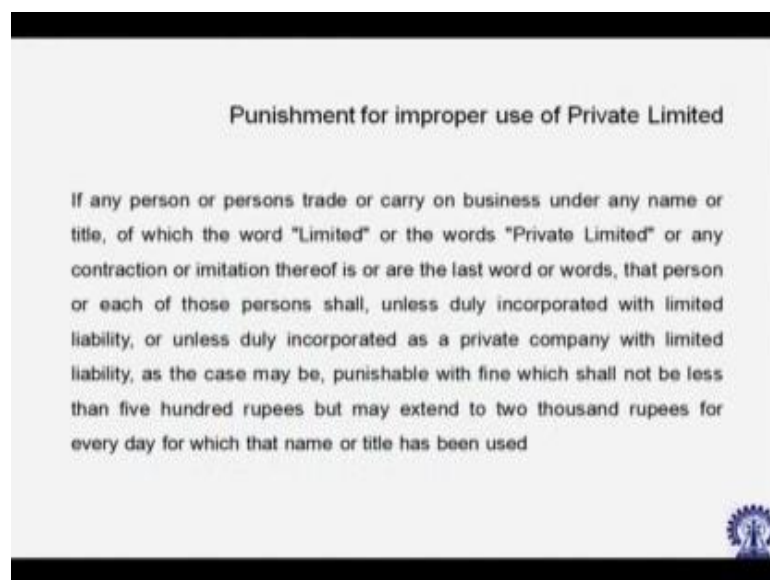
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Now, there is a power of the board; generally the powers of the board are same as the company which you prescribe in the objective clause of the company. Then you can have a restriction on the power like in the matter of restructuring matter of raising the further capital matter of alienating the property of this particular company. There can be kind of restriction for this particular purpose.

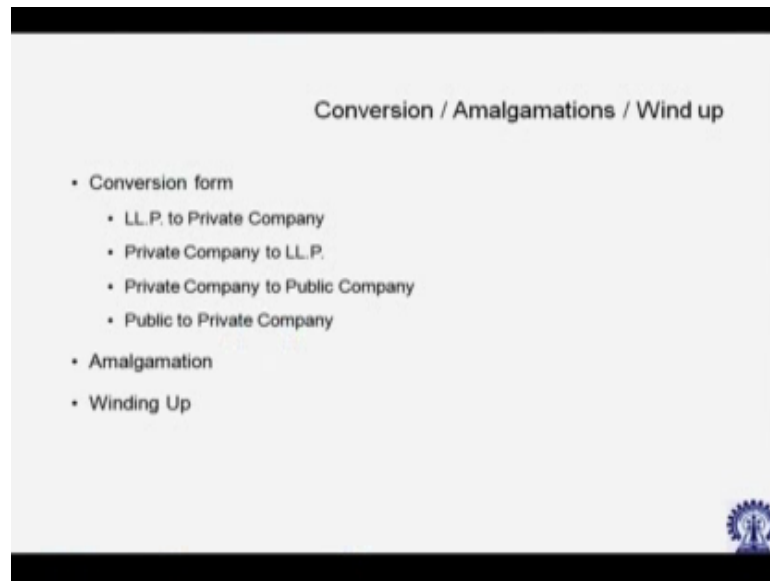
Now, there is a new provision which is created called a related transaction that means, if there is any person is interested in the company and because of that there is a particular transaction is happening then in that case that detail of that particular transaction need to be placed before the board and board has to take a critical look into this thing before they sanction this particular transaction. So, related party is one of the very strong provision which has been incorporated under this particular law and it case some people say that it really creating a difficult for many transaction in India because in India generally the ownership is family based and most of the time whatever the definition has been provided related party, most of the transactions cannot go through because of this close knit holding system I mean ownership system in India.

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Now, if you are using the word private limited for the improper manner or where you are not a private limited company, still you are using this word private limited you are subjected to punishment and there is certain provision has been created to that.

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Now, it is important to draw your attention here that you can do a lot of conversion, you can do the conversion from a private limited company to the other organization and I have told you when I have started the first introductory lecture that it is always good that you choose a simplest form of the business form and then you later on can go for more formal structure.

So, you can convert the LLP into a private limited company and there is a procedure has been provided in the LLP act itself, you can convert the private limited company into LLP and again that procedure has been provided in LLP act itself that means, limited liability partnership act itself and in both the cases you need to restructure the constitutional document that means, in case of conversion to LLP you need to create a document, which is incorporation document or the formation document, whereas the moment you are converting it from LLP to the private limited company. Again you need to create the AOA and MOA and then there is a particular process through which you can transfer the assets and liabilities and the moment, it is done then the organization which is been transferring it becomes defunct and you can strike it off this particular organization.



Similarly, a private company can be converted to a public company and public company can be converted into a private company and this particular conversion governed under the companies act itself and there is a clear provision has been provided relating to this particular thing.

Now, a company can be amalgamated that means, two private companies can go for amalgamation to put it in a popular terms; that means, they can go for a merger they can go for a spin off and there is most of the time, you will find whenever the company is stressed or company is not doing well, they can get merged or if the company is unable to really do well then the company can go for winding up that means, you can liquidate the company's assets and you can distribute the assets of the company, those people who have promoted the company as a startup and then you can also pay back all the debt which the company has incurred during its business.

Thank you.