

Legal Compliance for Incorporating Startup
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Lecture – 13
Law Relating to Pub. Ltd. Company

I welcome you in my 13th lecture relating to legal compliance for incorporating startup. I am in the module called incorporation of one person company private limited company and public limited company.

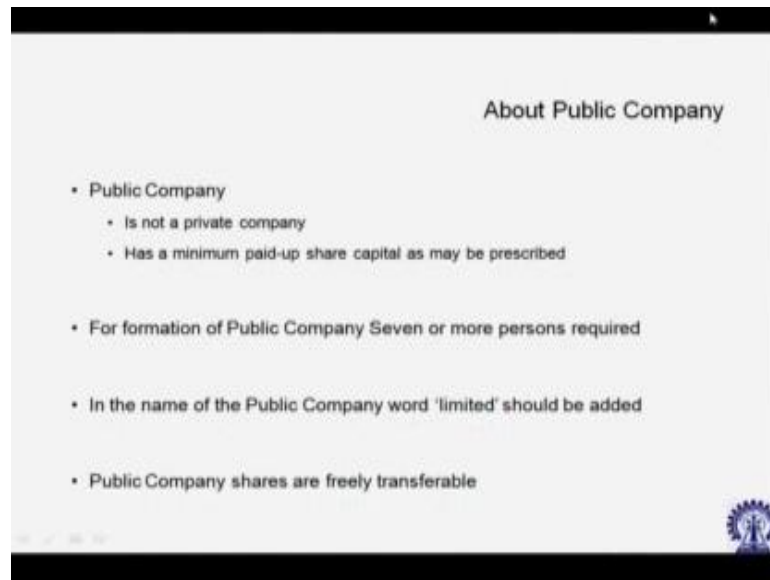
In my last lecture I have talked with you regarding private limited company and in this lecture I will concentrate more on public limited company. Now as I have told you before that all these particular companies either it is a one person company, or a private limited company, or a public limited company are governed by one single act that is called companies act 2013 previously it used to govern by companies act 1956. And the new act has been adopted in 2013 and after that all the companies governed by this particular act.

Now, the formalities relating to the incorporation of all the companies are almost same which I have told you before. And let me take you through some of the characteristic difference which we find in case of public company in compared to the private company. Now, public companies are those companies which are not a private company, and in case of a public company there can be a specific authorized capital which is different from a private company.

Now, previously statute used to specify that what should be the minimum capital with which public company or private company need to incorporate. But now this particular provision has been withdrawn and it is mentioned in the statute that whatever has been prescribed. That means, prescribed through the rules under this particular companies act itself. Now there might be certain objectives, because people, because government might be interested to incorporate some specific type of organization for particular sector. So, they might prescribe some kind of entry norms through the authorized capital or the

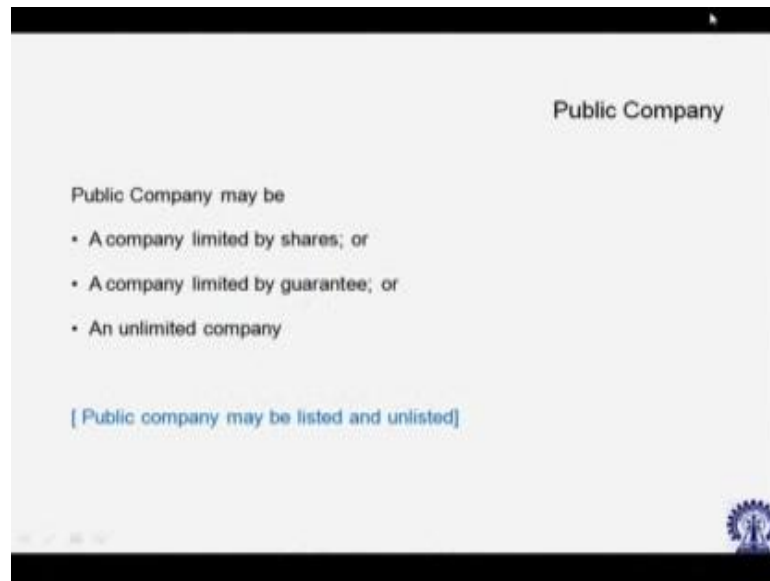
minimum capital with which the company can incorporate and that is the reason possibly they have taken out from the statute book itself.

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For the formation of the public limited company you need to have a 7 member in contrast private limited company you need to have only 2 members. In case of a public limited company you need to insert the word limited in the name of a public limited company. At the same time the public limited company can issue the shares or can freely transfer the shares, which is characteristically different from the private limited company because in case of private limited company you can have a restriction, but in case of private limited public limited company it need to be a freely transferable.

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Now, again the public limited company can be a similar nature, as we have in case of a private limited company. So, public limited company can be limited by share, public limited company can be limited by guarantee, and public limited company can be unlimited or public unlimited company. If it is unlimited company, then in that case the word limited will not be used in the name of a public company. And at the same time public company may be listed and unlisted. Now I am not going to explain these other 3 category that is limited by share, limited by guarantee, or unlimited, because I have already done that in my last lecture when I was talking with you relating topic private limited company and it is almost the same, only thing I like to draw your attention it is very uncommon to have a public limited company by the guarantee, and public unlimited company, or public limited company with the share as well as guarantee.

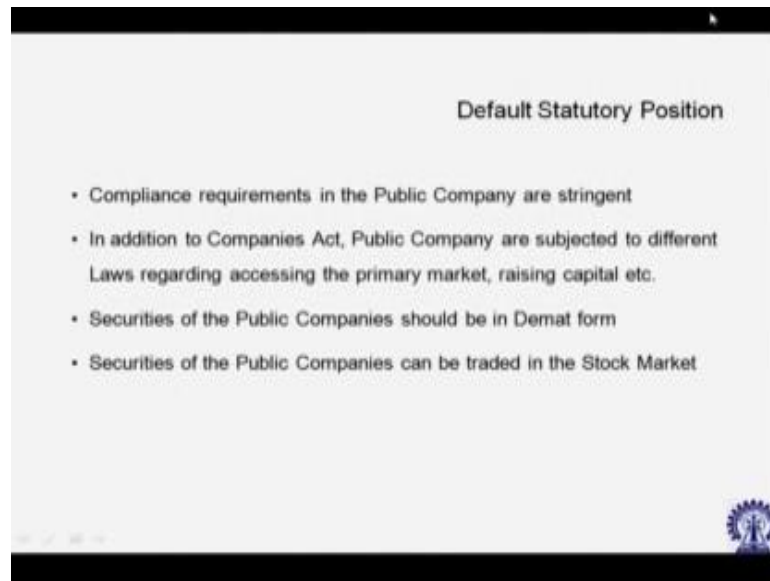
So, most popular form of public company, which you will find in the market are public limited company, public company limited by shares. Now public limited company or public limited public company limited by shares can be again divided into a 2 broad category one is known as a listed company and another is known as unlisted company now. Unlisted companies are those companies whose shares are or securities are not listed in a stock exchange. Now what is a stock exchange stock exchange is a market where you trade the securities of the company. Now when I am using the word securities

it means that any kind of instrument, which company issue for raising the capital. So, it can be shares different kind of shares, it can be the debenture, it can be the bonds, it can be the deposit so on so forth.

Now, previously a particular type of the shares can be listed in a stock exchange, that is the equity share can be listed in a stock exchange, and other kind of securities was not allowed to be listed in a stock exchange. But today you will find there is a all kind of security or most of the kind of securities are listed in the stock exchange. So, that it can give the subscriber a better liquidity into the in their investment. And there is a several law applies for that I am going to talk on that in subsequent part of my lecture. Now when you are talking about the unlisted company, the securities of this public company limited by the shares are not listed in any stock exchange, but these particular companies can raise the money from the public; that means, they can go for a private placement, to raise the money or they can even raise the money from the primary market by other means. They can even raise the money from qualified institutional buyer. So, there is many way you can raise this particular money.

Now, again the registration process in case of a public limited company, are same as a private limited company. So, I am not repeating those particular thing again in case of a public limited company we need to find out the name, register office, you need to talk about the authorized capital. Then you need to talk about constitution, and the information document of a public limited company, and then you need to talk about the incorporation certificate. Now, these provisions are almost same with the private limited company.

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So, I am just avoiding repeating this particular thing with you. Now there is a few significant points which you should keep in mind if you are incorporating your startup as a public limited company. In case of a public limited company the compliance requirement is more stringent or very stringent. In compared to all other formal form of business, the highest compliance requirement is with the public limited company. And if it is a public listed company, then compliance is much more. So, to put in the other way round the public companies are subjected to subjected to several laws, apart from the companies act. So, you might be governed by the security laws, you might be governed by some laws which is you know prevalent in money market you might be governed by the laws which is, you know relating to the foreign exchange direct foreign policy, you are might be subject to the bilateral treaties, you might be subjected to multilateral treaties you might be subjected to any you know investment directives by any international agencies as it is quite complex.

Now, it is also complex relating to accessing the capital into the different market. I am going to talk with you little later relating to the accessing of the capital. And in case of the public company it is not only access the capital from the domestic market, but they can even go to the overseas market, or the foreign market, to raise the capital for their company. So, if you have appetite to grow very high, or if you think that a particular

sector where you are entering to the business, the composition of the market is such that you need to have a quick growth, and you wanted to be a large company. Then it is advisable that you should start your business as a public limited company.

But as I told you the incorporation of a public limited company is costly affair, and the compliance, which you need to carry forward during the business of the public limited company is much higher, in compared to any other form of the business. Now in case of the public limited company this is a in the recent year if you look into the directives from securities exchange board of India SEBI, then you will find that all the securities which is issued by a public limited company should be in a dematted form. That means, you cannot issue the shares today in a physical paper form, physical you know physical form or printed in the paper or you cannot issue the debenture printed in the paper.

So, you need to enter into the contract with the depository, and then the depository is going to hold the shares which you are issuing for the benefit of the subscriber through their depository participant. Now, who is a depository? Depository, again another company who is authorized by the regulator to act as a custodian of the shares or the securities, this is another complex process and this is also cost intensive. So, if you want to you know incorporate as a public listed company then, in that case again you have to go with the depositories.

Now, next important thing is that, whenever you are issuing the securities, for a public company you need to go for, you need to enter you enter into a, listing agreement with the stock exchanges. And according to the law you need to enter into a 2, you know, at least 2, agreement with at least 2 stock exchanges, one is with the national stock exchange and another is a regional stock exchange. So, again listing the securities is a costly affair. So, all this particular thing if you take together, then in that case is really a costly affair from the part of the compliance.

Generally, whatever the people take the strategy the people you know incorporate a startup as a private company and then when they found you know that they have a more appetite for the fund or for the capital and they wanted to aggressively expand that particular company, then they generally convert their business from private company to a

public company, but you will find still until people are compelled to do that for their growth, they try to keep that particular company as a private company only. Like in between you must have heard that, you know the flipkart they wanted to you know go for a public offer, but later we found that, there is sort of sort of news in the media, that they have got the further investment from the private equities. And they for the time being they have not converted their company from private limited to public limited.

So, it is the part of the strategy also there how you wanted to carry forward your business and what is the requirement of that particular segment you are entering as a startup. Now as I have talked with you that you know if you are incorporating your startup as a public listed company, then the security which you are issuing to the people that can be traded in a stock exchange. And when I am talking about the securities I am talking of all kind of instrument, either it can be share, it can be debenture, it can be bonds, it can be other kind of convertible, you know securities like convertible debentures so much so forth that can be traded into the stock exchange.

Now there is a very interesting thing in case of a public listed company a public unlisted company, and that is the reason public listed or unlisted companies, are always a preferred vehicle, when you wanted to address the growth, or when you wanted the grow quite faster. Because in case of a public listed company accessing the capital is comparatively easy than in any other business form because you need to do a lot of compliance, you have to maintain lot of transparency you need to you know structure the information relating to organization. So, that actually gives you a better credibility to those people who want to make an investment in the company.

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Raising Capital / Issue of Securities

A Public company may issue securities -

- By way of rights issue or bonus issue in accordance with the provisions of this Act; or
- Through private placement
- To primary market
- To foreign market [Depository Receipt]

["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]

[Procedure of issuing securities]



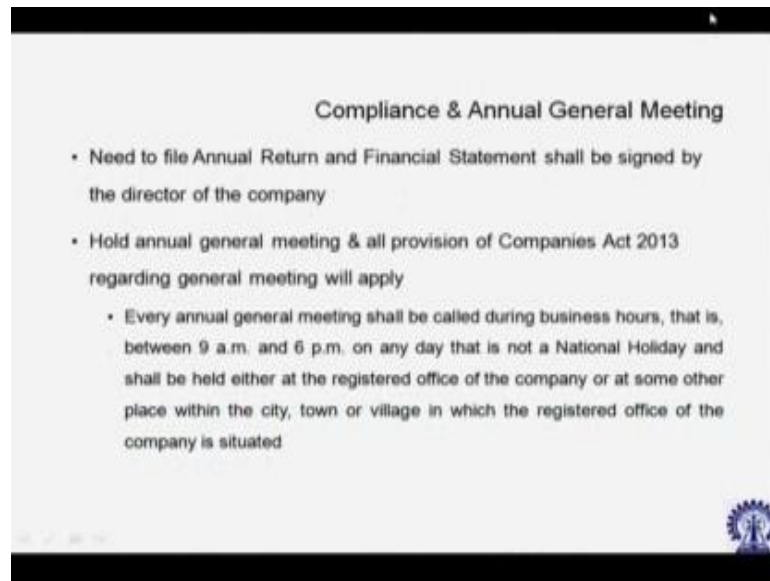
So, in case of a public listed company you can issue the shares with your existing share holders, through the means of the right or bonus issue, you can go through the public private placement; that means, you can you know address the target people, to raise the fund. You can also access to the primary market, primary market means inviting the public subscription; that means, you can invite the public to subscribe your securities. So, that is generally normally known as a primary market. And you can also go to the foreign market, or through your issuing of the depository receipt.

Now you will find there is a 3 common depository receipt generally prevailed in the market today. That is American depository receipt, second is global depository receipt, and third one is Indian depository receipt. So, any through this, any of this instrument any of this particular pattern you can access the access the market, but apart from that you can also raise the money from the any public financing institution too. And the most of the time, you will find the public financial institutions are the biggest investor in the in the capital of or in the security of a public listed company because they also get benefit by the market capitalization; that means, you know increase in the value of the shares of the company in a stock market, at the same time from the dividend which this particular public listed company provides to this public financial institutions.

So, if you are incorporating your startup as a public listed company, you have lot of option to raise the capital from the different sources. Now whenever you are going for you know accessing the market, we commonly talk about raising the fund or you know issuing the security is accessing the market. There is lot of restriction which you which you are subjected to while you are accessing the market. And please note that you cannot yourself do this particular thing by your own, you need to appoint the expert intermediaries, who have been licensed by the regulators in that particular market. Like if it is you know capital market, then that particular person need to be licensed by the capital market regulator, and if that particular you know.

Now, most important thing which you need to do whenever you wanted to access the market is to prepare offer document, which is commonly known as prospectus. And there is a different stage of preparation of this particular offer document, and these particular offer documents are generally prepared by these intermediaries, which are commonly known as a merchant banker. And there is a number of other intermediaries who support the merchant banker in accessing the market or carry forward the issues either it is initial public offer or follow up public offer. They are the lead manager banker to issue registrar to issue underwriter. So, much so forth, and this is a complex process. And this particular process you need to you need to carry forward if you want to access the market and raise your capital.

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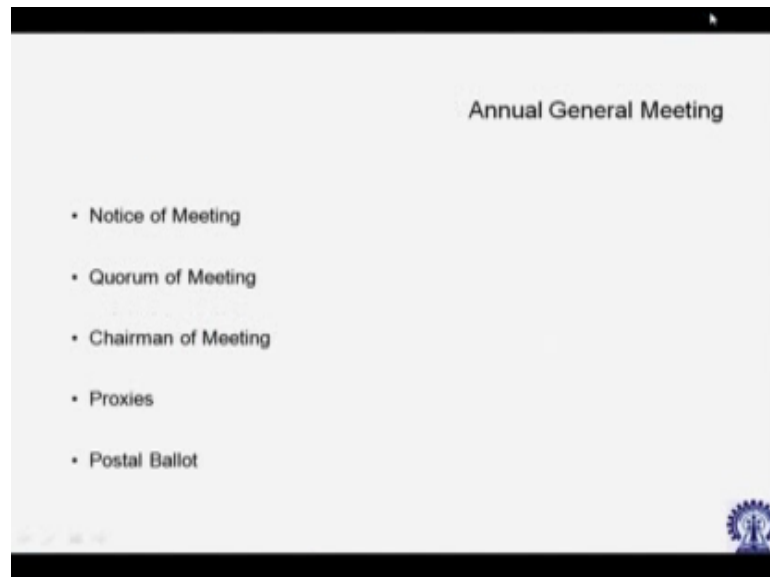


Now, let me take you to the next issue relating to the compliance. In case of the compliance also of a public limited company, is quite stringent compared to private limited company. So, you need to hold annual general meeting periodically, and in a manner it has been prescribed in this particular act itself. Before you hold the meeting you need to give all the information which is required to be given to all the members. Like you need to provide the annual report, you need to provide the financial statement which the audited financial statements then you need to provide the directors report and in the directors' report, there is almost everything relating to company is need to be specify.

So, you need to specify relating to what are the capital conditions of that particular company. How much how much you know what is the type of business the company is carrying. What are the risks which is you know involving to that particular business. What are the measures you have taken to manage this particular business risk? Then what are your corporate governance initiations within your company itself. Then you know how you make the relation relating to business policy and the management of the organization. What are for committees through which you function the board? So, all these particular details you need to provide in the annual general meeting. And in the annual general meeting all the people who are the member of the company need to be

called, and again you need to give a 21 days notice and this particular annual general meeting need to be held in the register office of the company, and it should be done from 9 am to 6 pm of any working days.

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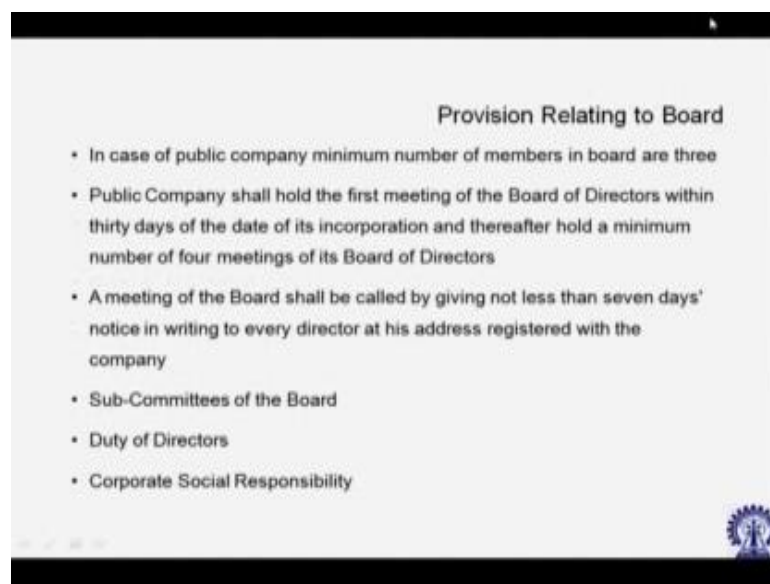
So, in case of the annual general meeting, as I have discussed with you relating to the notice of the meeting; in the notice of the meeting you need to annex the annual report as well as the financial report, and you need to give this notice 21 days before, this particular annual general meeting. So, there should be a quorum in the meeting, and the quorum should be specified in the AOA of the company. The chairman of the meeting as I have told you that, generally the chairman same person who act as a chairman of the board, is generally the chairman of the meeting also, and you will find nowadays these particular chairman is became, almost a permanent post. So, chairman of the company though it is not statutorily, you know require, but chairman of the company is almost became, almost you know, every company maintains that and the same person chair as in the board meeting, as well as in the general meeting of the company.

Then you need to give allow the proxies to come in. And in case of public limited company the proxies the importance of the proxies are very high. Like in our country it is developing, but in other countries you will find there is a proxy statement. There is a

foundation of the voting trust which is managed by the proxies. Because in case of the public limited company it is widespread shareholding. So, it is not possible for many shareholders to come and participate in person. So, they generally appoint the proxies to go and fought on their behalf.

And similarly, statute as well as the good governance principles are prescribing, that we should more and more emphasis on the postal ballot. Whenever I am talking about the postal ballot which I have explained to you in my last lecture, also we are talking about all the electronic mode, through which people can participate in the voting, on the issues, of the company.

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Now, I have already talked with you relating to this aspect of the board, but nevertheless let me put it some in structure information. In case of a public limited company there should be a 3 member in the board. So, minimum member should be 3. The first board meeting should be within the 30 days of the incorporation, and there should be a 4 board meeting. Now please remember in case of a public limited company what the board has been discussed and what are the decision has been taken by the board that need to be recorded, and that should be reported as a part of corporate governance report.

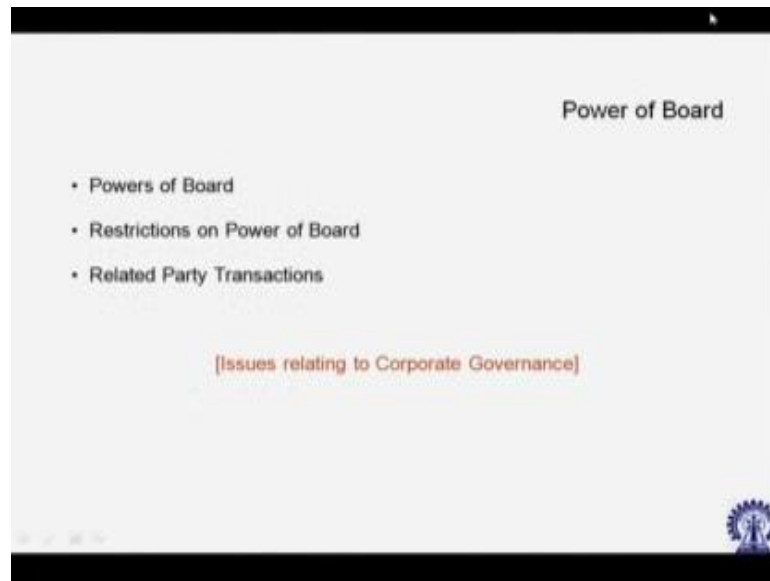
Not only that as I have talked with you in case of a public limited company, now law prescribe that there should be a subcommittee in the board. Like there need to have audit committee, there need to have a grievance redressal committee, stakeholder grievance redressal committee. There need to have a succession committee, and there need to have a compensation committee. Apart from that there can be a number of committee, in that particular board. So, what you know law is prescribed that whenever the board is taking a decision, board is taking a informed decision, after giving a adequate time to analyze the situation, and then to decide that what should be right policy for that particular company, so this particular process and everything.

Every meeting of the committee not only the board, but the subcommittee of the board, needs to be reported. And whatever matter they have discussed that also need to be reported. So, it is very very stringent process. And you in addition to that, you need to give the qualification of the directors who are became the director of the particular company. Please remember this disclosure is specifying not only in the listing agreement, but it is specified in the statute itself. So, one need to specify this particular information in the annual report itself.

Now in the present statute you will find they have prescribed the duties for the directors. And this is the new insertion for the public company which was not there previously. And herein, they have basically said that director has a duty not only the company, but for all the stakeholder of this particular company, in addition of the environment where they are operating.

So, the public companies directors has a lot of duties; that means, if you are a promoter of the company of your startup and you have incorporated your company as a public limited company and you have become a director, of the company be careful about your responsibility. Because if you have are then infringing this particular positive responsibility, which has been given or which has been imposed on you by the statute, then in that circumstances you will be debarred, to be a director of your company. So, in case of a public limited company you have a further responsibility, relating not only to your company, or to your shareholders, but to all other people, who are one or other way round attached with your company.

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Now, again you will find the statute has specified that there should be a corporate social responsibility. And they have specified that which are the companies should have the corporate social responsibility. And therein they have applied 2 criteria one is a network of this particular company at the same time the turnover of the company. So, there is every possibility that if you are incorporating the startup as a public limited company, then in that circumstances you might come within this particular parameter. And in those circumstances, you need to pay 2 percent of your profit for the purpose of corporate social responsibility.

Now, again the power of the board is prescribed under the company's act, as I have talked with you in case of a private limited company. There is a certain restriction has been provided, and the restrictions are relating to the restructuring of the board relating raising of the further, capital relating to selling of the assets of this particular company, relating to giving the loan to the directors and so much and so forth.

But whatever the power which has been provided in case in objective clause of the company, a company will have the similar kind I mean the board of director, will have a similar kind of you know power. Now the related part of the transaction is one of the very important issues which has been inserted, which I have talked with you in case of a

private limited company, and this is more stringent in case of sorry private limited company, and this is more stringent in case of a public limited company. And whatever the related party transaction happen in your company that need to be reported.

So, if any member of your company, or any director of the company, are interested in the transaction; that means, you are purchasing a land from a member of the company or a director of the company, or you are outsourcing some work to a company where, the same director also director in that particular company, or if you are sourcing some of the input material form from the organization where, from the company, where the same directors are the director, or the relative of this particular directors is a director, then in that case all this particular thing comes with the related party. And whatever it is you need to specify in detail about this particular transaction.

Now issues of the corporate governance are very stringent. And reporting of the corporate governance is become very structured now. And to promote this particular corporate governance, there are a several issues that have been incorporated. Now, there is the independent directors who should be as a part of the board in the public limited company, is been prescribed under the act. And they have also prescribed who can act as independent director. What should be the qualifications of the independent director, and what should be the responsibilities of the independent director, please remember, today the act has given the power to the independent director that they can hold the meeting, without the promoters director, or the executive director.

So, if you are a promoter director, or if you are a promoter, and then become the director even the independent director can hold the meeting without you, and take a decision which is binding on the company. So, these are very, very you know stringent provision very, very difficult position.

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Now, there are issues relating to the corporate insolvency, in case of a public limited company. And you need to address that; that means, there may be scenario, where you might have a prospect of the business, but all of the sudden there is a crunch relating to the liquidity. Or you have lost a lot of money, in a particular business. Because of the external condition which is beyond your control. Then you might face the insolvency scenario.

And if you are become insolvent then there is a several ways by which you can, you now, come out particular, come out of that particular scenario and you will find that the government of India now, passing a bill relating to the corporate as well as individual insolvency or business insolvency, and possibly that might be the law after some days. And there is a there might be a situation relating to the substantial takeover substantial acquisition and the takeover. And in case of public limited company there is a possibility to have a market takeover; that means, some other company can purchase the shares of yours from the market, and then they can get the take the control over your company.

So, this is this particular scenario only can happen in case of public limited company. Public limited listed company, it is not possible in other company. So, if you do want to hold your company back with yourself then, you need to have adequate measures to stop

this market acquisition. Similarly there is a possibility to have a merger. There is a possibility to have a further acquisition by some other company, which is basically known as a sales agreement or some other process it can be done or there can be spin off in your company; that means, some of your undertaking might, become independent then your company, and they can be a subsidiary of your company or they can be a firm of your group company.

And at the same time, there is a possibility that you if your venture is not going well, then you can wind up your company by following the process. So, there is a 2 type of winding is possible one is by the court, and another is a voluntary. So, whatever you do in these particular circumstances, board has to take a decision, and in that case you need to have an expert, to help you out to take you through this particular process. But please remember the government of India is trying, to smoothen this particular process of incorporation at the same time to exit this particular process. Because you know India is not very friendly to the business incorporation, in compare to other country. So, the present government is trying hard. So, that you can incorporate your business quickly, and if you are not able to run your business nicely, then in that case you can quickly exit out of your business.

So, if you are thinking that well you will incorporate our startup as a public limited company, then I think you need to give a serious thought before you do that. Because it is a money intensive, it is a compliance intensive, and it is it may be the difficult form or to choose in the beginning of your startup.

Thank you.