

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

**Lecture – 03**  
**Comparative Analysis of Incorporation Requirement**

I welcome you to in my third lecture regarding the fundamentals of legal compliance for incorporating startup. More specifically, I will concentrate my talks on comparative analysis of compliance requirement within the different business form.

(Refer Slide Time: 00:52)

**Comparison between Business Forms**

Form	Formation Documents	Verifications of Promoter's Credentials	Filing of Incorporative documents with registering authority	Business Objective	Evidence of Business Capital	Register Address	Governing Law
Proprietorship	--	--	--	--	--	No - Legally Yes - Convenience	--
Partnership	Partnership Agreement	--	Registrar of Partnership in Every State	Legally not necessary	--	Yes	The Indian Partnership Act 1932

So, what it did, I have created a table for you, which will give you a clear picture regarding the compliance, which you need to do, regarding the different business form. And to do that, what I did, I put the form of the business in the left side of this particular table. So, you can easily identify which business form I am talking about, and then I have put a several criteria, into a form left to right. One is formation documents, what kind of a document you required, to require for incorporating the business form, and you will be surprised to know that, there is some of the cases there is a legal requirement, and in some cases there is no as such legal requirement.

Similarly I have talked about verifications of the promoters credential. And this is become very important nowadays, if you are incorporating any formal business form. Because you might heard about the vanishing company, and vanishing companies are

really creating a lot of trouble into our economic. And there is a lot of the defrauding to the people, after taking the investment from the people at large.

So, the government has come up with different mechanism, to arrest this kind of a vanishing companies or vanishing organization. So, now, the credential verification is, one of the important thing, while you are going for incorporation of the business. Next is filing of incorporation documents with registering authority. And you will find for the different business form there is a different registering authority. Some of these particular registering authorities are administer, by the central government, or monitors by the central government, and some of them are monitored by the state government. And they have a designated officers in the different city, and different within the different states, or may be in multiple city within the different states.

Now, some of the laws also prescribe that you need to specify the business objective, or in which of the area you wanted to carry forward the business and what are the ancillary business you wanted to carry in addition to your main business. So, you need to have a affront declaration relating to your business, at the time of the incorporation, but this is not necessary for all type of the business form. So, that is a reason I have created a column for that. So, it can give you clarity in this regard.

Similarly, in fund, you need to have a business capital. And some of the law specifies that you have to often tell, that what should be your authorized business capital in the substances of your organization. Authorized business capital means, if you are not amending your capital clause in the constitution document or formation document then you cannot raise more fund or more capital than that. So, you also required to disclose your registered office; that means, if somebody wanted to communicate with you, you need to have a definitive address. And law specifies that, like if it is a company's act; then will companies that insist that you have to have a register office, and register office need to be written into your constitution of formation document. And then in the last column will find I have given you governing laws.

So, under which laws this particular business form governs under which law it governs. Now this is the induction process, I am just inducting you gradually, into this particular understanding. So, when will go forward in our discussion, I will take you in detail about this particular formation process, but now I wanted to give you this particular

comparison. So, that you can further understand that which organization you will chose, for your start up for your startup when you are starting you are startup itself.

So, the first one, which I have taken is a proprietorship. And in case of the proprietorship there is a no formal formation documents are required. Now there is a no verification also required for the promoters of proprietor form. There is no incorporation authorities, who give certify, certification for incorporation of proprietor form. There is no business objective required for the proprietor form. The there is no requirement of a statutory capital, or the capital which should be mentioned into the business formation document, or the constitution of that particular organization. There is a no register address is required, but you know for the convenience you should have a registration office, and that is what a register address, that is what I have written that yes for the convenience, but there is no legal requirement and at same time there is no law which governs the formation of proprietorship.

So, there is no law for the proprietorship. So, you are free to start your proprietorship form at any point of time, and you need not require to go for any registering authority for registering your proprietorship form. But I am going to come into my subsequent lecture and tell you, that even though you are not require to have any formation requirement, or any formal authority which incorporate the proprietorship form, but you need to take a permission from other regulatory agencies to start your proprietor form. That I am going to talk with you in my subsequent lecture.

Now, let us looking to the partnership; in case of the partnership you required to have a formation document, which generally called a partnership agreement. But let me tell you this thing to you it is not necessary, that you have to have a partnership agreement, some time even the partnership, can be inferred for the purpose of the law. But if you do not have a partnership agreement, then you are in certain disadvantage. Like if you wanted to sue somebody tomorrow, for anything, which any wrong or any which of contract, then in that case you cannot sue that particular person. So, it is advisable that you should have a formal partnership agreement.

And that particular partnership agreement should be registered with the registering authority. So you know promoters' verification in case of the partnership is not required. In case of ah, you know authority I mean registering authority for partnership is varies

according to the state, and in a state you will find a there might be a multiple designated place where you can go to register your partnership. It is actually allocated according to the territorial jurisdiction.

So, you need to find out, that your place where you wanted to register your business, it falls within which jurisdiction. Then there is a no evidence of business capital required; that means, you are not required to often declare that for these particular partnership, you are going to have this much of amount.

Register address is required because the movement you are registering your partnership document, or partnership agreement with the registrar of the partnership, you are require to give them registration office address, because registrar is going to communicate to you in that particular address. And at the same time it is also advisable to have your registration, office register office, because if you want to further entrust into an agreement with other people, in the future for the purpose of a business, then in that case you need to have a registrar office, because registrar office has to be mention in that particular agreement itself. And in future whenever the other person want to communicate with you, they will communicate in these particular registrar office.

(Refer Slide Time: 11:29)

Form	Formation Documents	Verifications of Promoter's Credentials	Filing of Incorporation documents with registering authority	Business Objectives	Evidence of Business Capital	Registrar Address	Governing Law
Limited Liability Partnership	Yes Incorporation Document	Yes Partner Identification Number	Yes	Yes	Yes	Yes	The Limited Liability Partnership Act 2008
One Person Company / Private Limited Company / Public Limited Company (Non-listed & listed)	Memorandum of Association / Articles of Association	Director identification Number	Registrar of Companies	Yes	Yes	Yes	Companies Act 2013

Now, let me take into next form of business organization. That is a limited liability partnership, which popularly known as LLP, which I have told you last class. Also it requires a formation document. And in the formation document law prescribes that what

are the information you are required, to give and what are the forms you are required to file. I am going to deal with you with you in detail about this particular issue in my subsequent lecture.

In case of the promoter credential; yes, you need to have a partner identification number. So, who going want be a partner in these LLP, they need to take partner identification number. Please remember there is a one important concept, which has been introduced in LLP, which is known as designated partner; that means, the person who is under the law authorized, to deal with all the regulated agencies. Again I will detail it out while I am going to speak, about more about these LLPs in my subsequent lecture.

Now, you need to file, the formation document with the registering authority. And there is a designated registers, in a different state, who are dealing with the LLPs. There is a business objective you need to mention in case of the LLPs. There is a need to have evidence of the business capital; that means, you need to declare often that what kind of business capital you are starting with. And at the same time the governing laws is limited liability partnership act. But you know let tell you these particular thing, that while I mean registrar sometimes you registrar business capital is important, because during the registration, your determination of registration fees depend on, how much business capital with which you are incorporating your firm. And at the same time you need to have a registrar office in case of the LLP.

And now let me take you through the next and next important, and formal formal business form, which I have talked with you the last lecture. And I have dealt all the formal business form together, because they govern through the single enactment called the companies act 2013. So, in this particular category I am going to deal with you, one person company, private limited company, public limited company. And within the public limited company, it is also non listed, as well as listed company.

Now, in case of all the companies, whenever you wanted to register there, you need to have a formation document. And the formation documents are known as memorandum of association, and article of association. In short they are MOA and AOA. And though the promoters are not required to have any particular number for promoting the company, but what law insist today, that whoever is going to be a director, in the post incorporated company, they should take director identification number, or they should have a director

identification number, and they are required to code these director identification number at the time of incorporation of the company. So, what is the type of company, it is meant here. You need to have a director identification number. Now you need to file all this formation document, or we also call these as a constitutional document with the registrar of companies.

Now, in every state you will find there might be one or more registrar of companies. It is depending on how much registration happened in a particular state, the Central Government decide to have a number of office in number of location in that particular state. Let me give you one example. Like you might find a number of registrar office in state of Maharashtra. One might be in Mumbai, one again you will find in Pune or it might be in other location of the Maharashtra. And many of the time it might so happen that there is a one registrar office for couple of states.

Like if you want to incorporate a business in Andaman and Nicobar island then your registrar office is in west Bengal and in Calcutta. So, for entire west Bengal it is a Calcutta. And at the same time for Andaman and Nicobar island again it is a Calcutta. So, from where you have going to get under which registration you are coming, now it is become very easy, you have to go to MCA website, minister of corporate affair website, and then you can find these registrar office, and which registrar office and you can find out that your area falls under which registrar office. Because there is a territorial allocations for each registrar office, or there is a geographical location falls within the each registrar office.

So, you can simple another thing you can do you can simply google it, and you can find out that which area or which geographical location is coming under which ROC, or registrar of companies. Now you need to specify the business objective in memorandum of association of a company. And this is bit stringent because, of if you are not follow the business objective which you have mention, and you do something which is not mention within the business objective, then you will be fall within a restrain which is popularly known as ultra virus; that means, the act will be treated as ultra virus, and it cannot be enforced legally.

So, in case of the company the objective clause are quite important. So, while you are framing objective clause you should be careful. In fact, I will suggest you to have a little

broader objective clause, while you drafting your company's objective clause. Because if you are tomorrow planning to have a additional business or if you wanted to have a diversion into your business, into a related domain, and if it is not mention in your objective, clause then you need to amend your objective clause. So, it is advisable that you should frame broader objective clauses.

Now, you need to have often business capital mentioned, in your constitutional document or formation document. And this is known as authorized capital in case of the companies. And as I have told you earlier also, that if the authorized capital is not amended, you cannot increase your capital. So, if you wanted to have a larger capital for your organization, you are required to amend this particular authorized capital. But again 1 thing let me caution you that if you have a very large authorized capital, in the beginning or at the starting of your startup, you might be in slant disadvantage. If it is not required that much of authorize capital, because as big your authorize capital is you have to pay, that much of registration fees. So, you be better careful about this, you know framing of the capital, or mentioning the amount of the capital in your register, in your formation document. And in case of the company it is governed by the companies act.

(Refer Slide Time: 21:15)

**Comparison between Business Form**

Form	Formation Documents	Verifications of Promoter's Credentials	Filing of Incorporation documents with registering authority	Business Objectives	Evidence of Business Capital	Register Address	Governing Law
Society	Yes Memorandum of Association	Yes	Yes	Yes	Yes Corpus	Yes	Indian Trusts Act 1882



Now, let me take you to the next one, which is a society and in case of the society. You need to have a memorandum of associations. The verification of the promoter credential is not required ordinarily. But you need to mention the address, name, and if there is any

evidence like you know your pan card or may be voter card is required, to be given at the time of registration, but it is not as stringent as it is in case of the company.

Now you need to have filing of incorporation document, with the registrar authority. And you will find there is a register of the society in every state again. And you need to go to the register, to register your society. And you are required to give evidence of a capital in generally, it is not as stringent as, it is in case of the company, but you need to mention some amount which you are proposing that it might required for starting the venture, which you wanted to initiate.

(Refer Slide Time: 22:56)

Form	Formal Documents	Verifications of Promoter's Credentials	Filing of incorporation documents with registering authority	Business Objectives	Evidence of Business Capital	Registrar Address	Governing Law
Society	Yes Trust Deed	No	Yes	Yes Purpose	No	Yes	The Societies Registration Act 1860
Cooperative	Incorporation Documents and by-laws	Yes	Yes	Yes	Yes	Yes	Under different State Laws e.g. WB Cooperative Societies Act 2006

Now, you need to have a registrar office. In case of the cooperatives, it is a you need to have a incorporation document. And you need to have a framing of bylaws. You are not require to have a promoter credential verification, as it is required in case of the company, but you need to have some kind of the evidence of their name or their identity and the residence and everything. You need to have filing of incorporation document with registrar authority. You will find every state there will be a cooperative registrar.

Now please remember the cooperatives are basically state legislations. So, there might be bit of variations of the cooperative society in every state from one to another. So, in some state they might call it, as cooperative societies, some state they might call it cooperatives. So, much so forth, and there will be some kind of variation at the time of a registration, you know formation document requirement, may be the business objective



mentioning of the business objective, or may be in case of evidence of business capital. And you need to have a registrar office, in case of the cooperative do. And in cooperatives as I told you before that it is governed by cooperative act, of the different state, like one example I have given here it is a west Bengal cooperative society is at 2006.

(Refer Slide Time: 24:49)

**Comparison between Business Form**

Form	Formation Documents	Verifications of Proprietor's Credentials	Filing of Incorporation documents with registering authority	Business Objectives	Evidence of Business Capital	Registrar Address	Governing Law
Trust	Yes Memorandum of Association	Yes	Yes	Yes	Yes Corpus	Yes	Indian Trusts Act 1882

Now, the last one is relating to trust. There is a memorandum there is a formation document is required. And the formation is the document is generally known as translate, and then a person who is sponsoring the trust, or proposing the trust, he is credential is required to be verified. So, that is the reason I have said yes.

Then you need to have a filing document, with the registering authority. Because there will be register of the trust in every state you are you are required to give a objective, that for which this particular trust is incorporated, but it is not the same as we understand in case of the companies act, because in case of the trust there is a lot of flexibility for doing things for the benefits of the beneficiaries. If the evidence of the business is in the form of a corpus. And then you know there is a registering office for this particular trust, and the governing law in case of the trust is Indian trust act. So, to you know to draw your attention that you know there is a different kind of a compliance requirement where you want to register your business form. In some cases, it is quite stringent, some cases it is comparatively easy.

So, my advice is to you choose simpler business form initially. And then later on you can skill it up to the formal business form. Let you might start with the proprietorship. Then you can gradually covert the particular proprietorship in LLP, and from LLP you can convert your startup into a company like either a private company or even a public company. So, you should have a strategy in place, because you know legal compliance, also sometimes hinder the growth of a startup.

Thank you.