Legal Compliance for Incorporating Startup
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Lecture – 07
Law Relating to LL.P

I will welcome you in my 7th Lecture relating to Legal Compliance for Incorporating Startup. And I was discussing with you regarding Incorporation of Partnership, LLP and Co-operatives. In this lecture I will concentrate my talk relating to Law relating to Limited Liability Partnership which is commonly known as LLP.

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Now, in the last lecture I have talked the law relating to the partnership, so that was a general form of partnership or which you can name it as a general partnership. I have told you that general partnership is a quite flexible structure for your startup, and you can really start that particular type of partnership at any point of time without much a preparation. What you need to do? You need to entire into a partnership agreement which you generally call partnership deed. And simply we can start a business and the later on you can go and register that particular partnership agreement.

But when you are talking about the LLP, LLP is more a formal business form. If you refer my previous lecture then I have said that LLP govern by the Limited Liability Partnership Act. And the limited liability partnership act provide the provision relate into incorporation of this particular limited liability partnership it provide the qualification for people who can be partners of these kind of a partnership. It provides the procedural which you need to follow for running of this particular partnership or managing of this particular partnership. It compliance a comment is more in terms of financial disclosure in terms of the qualification of those people who are managing these partnership, and in terms of restructuring of this particular partnership.

Now, in my previous lecture whenever I was telling with the partnership I did not talk with you relating to the restructuring of the partnership, because traditionally there was a no as such concept of restructuring of the partnership for a general partnership. Because if the business fail you pay to the creditors and you de solve the form. In case of the LLP there is a formal provision has been created for those stress in a LLP's or stress scenario wherein the form is need to be destructor or the constitute.

So, let me take you through this particular law which govern this LLP or limited liability partnership, and while I will do that let me share with you that some of the provision of LLP are similar like partnership. At the same time there is some of the provision you will find quite resemble with the companies. I generally tell my student that the LLP is basically a sandwich between a partnership and a company or some type of organization which is in middle between these two types of company. Partnership is extremely flexible business form. At the same time the companies is a quite a formal business form. So, in case of the LLP you have built the flexibility within the formal business form.

Now you need to incorporate the partnership. Now incorporating the partnership means there is a certain procedural which have been prescribe under the LLP Act and whoever wanted to be a partner or promoter of the LLP they need to comply that particular procedural. To some extend I have indicated this in my previous lecture, but let me repeat that you might require to have incorporation document which I am going to discuss little my subsequent part of the lecture. You might need to get partnership identification number, you might need to get a name for your partnership and further matter you now do follow certain procedure. So, it is a quite a formal approach in this particular sense.

Second important thing is that in case of the LLP which gives a lot of age in terms of a business protection of the partners from the business risk is a limited liability of all the partners. Now in the general partnership what I told that all the partners are jointly and several (Refer Time: 07:11), but in case of the LLP the liability of the partners are limited. That means, there liability extend up to their capital contribution. If they are agreed to contribute a x amount in the capital of the company the liability of these particular partners ends there only, it do not extend further then whatever they have promise in the incorporation document that they are going to contribute in the capital of this particular partnership.

Next one is compliance requirement is comparatively less than other formal business form. But it is comparatively the more form the flexible business form like partnership or proprietorship. In case of LLP your compliance is in terms of filing of annual report which will include the financial report of that particular form. You need to do kind of a disclosure which is require for change in a partnership, that means with the admission of a new partner in the form, but it is not as severe as it is require for the companies itself.

But at the same time please remember you are not exempted from other loss compliance which I have also talked with you in my previous lecture relating to partnership or when I have said that you need to comply that tax law, you need to comply the environmental law, you need to comply all other sector law if there is a prescription to comply relating to that.

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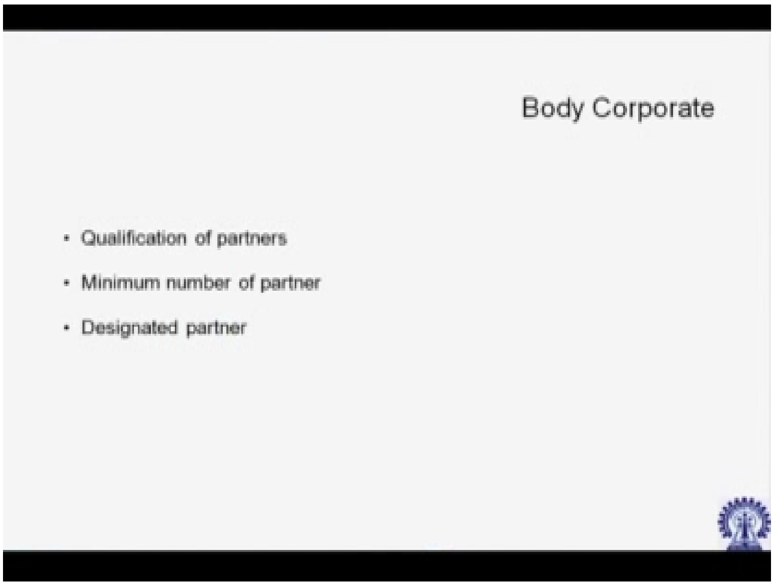

Now being a body corporate, means the LLP is kind of a person in the eye of law. That is a little technical sense you know what is a meaning of a person in the eye of law; meaning of persons means like as a natural person as you have certain rights, like you know you can hold a property in your own name. You can go and sue a person if you are right being infringed because statute is giving the guarantee of your right. Or somebody can come and sue because if you are done something which his infringe is right either a civil right or a contractual right. These kinds of an attributes is provided in case of a limited liability partners when that is a reason you called it a body corporate. And being a body corporate once it also prescribes further that what should be the qualification for his partner.

So, if somebody wants to enter as a partner in these particular firms he has to be person who can enter into a contract. That means you should attend the age of majority. Now ordinarily your age of majority is 18 years, but if you are admitted under the Guardian and Wards Act then case your age of majority will be 21 years, so you need to understand you are subject to which law. Then you need to be sound person I mean person sound mind. That means you should not have a kind of understanding problem, you should not be adjudicated insolvent. So, this is the few parameters which are prescribed by the law who can enter into contract.

So, the person who is going to be qualifying as a partner he should not suffer from all these difficulties then in that case you cannot be a partner of this particular form. Then these particular body corporate prescribe the minimum number of the partners and it says that the minimum number of a partners is 2 and in no point of time the form can continue more than 6 month where the partners is reduce in 1. So, you need to take the partner immediately if one of your partner is died or met with an accident and met with an accident and he is unable to work or he is became a mentally insane or he is stable of some kind of a in capacity who is a law private to continue as a partner.

Now, there is another new concept which is being introduced under this particular act which is known as the designated partners. Now designated partners are a person who is actually responsible for all legal compliance. As I said to you that the legal compliance in case of the LLP is little higher than that of a partnership, and whatever this organizational legal compliance relating to filing of annual return making other type of disclosure which law prescribe, this designate partners will be responsible for that. To put it other way round the law specifies that a particular person will be designated who is going to discharge the day to day life day to day work of that particular partnership, and he is also legally responsible which is something different or this is an additional provision which you would not find in partnership.

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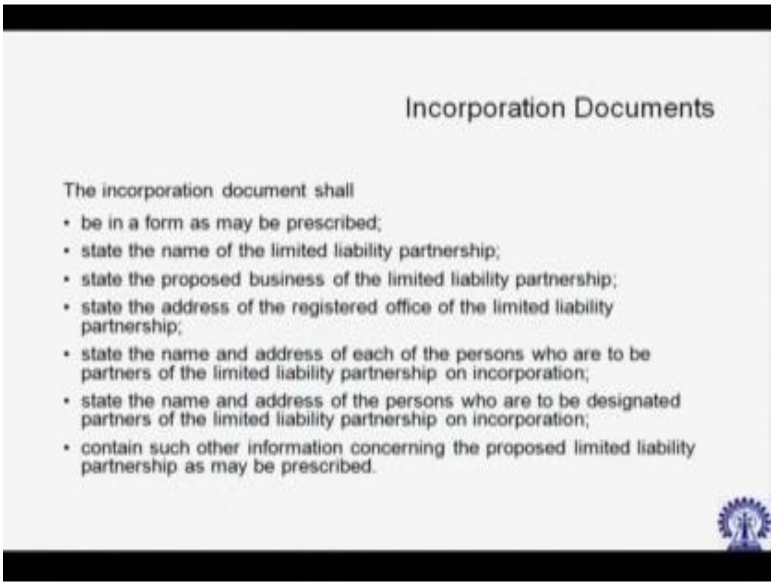

Now, let me take you to next issues that you need to prepare incorporation document in case of limited liability partnership. Now when we are talking about the incorporation document; incorporation document is almost similar like a partnership deed. Where you basically define the relationship between the parties as we have discuss in the previous lecture, but in addition to that you need to give something more information. Like in the incorporation document you need to talk about the type of business these particular form is going to carry forward which is more similar like company, and which I call first public disclosure about the nature of business who is the form who to carry forward.

So, the incorporation document should be according to the form which has been prescribed and you will find there is the many form which has been prescribe for the purpose of the incorporation and I am going to deal with this same in my next lecture. Then you need to state the name of the limited liability partnership and there is a certain formality to do that I will also deal with that in my next lecture, you need to state the purpose of the business or you need to state the propose business of a limited liability partnership. Now when we are talking about the propose business that means you need to detail out that what are the business this form can carry out. That means, there is a kind of restriction relating to change of a business all of a sudden without follow the proper procedure. Herein you have a restriction in compare to a partnership form.

In case of a partnership form you do not have any kind of restriction relating to the change of your business. If the partners agreed you can simple change that particular agreement and go ahead with that particular change of business. But here in there is some kind of statutory restrictions are there because you need to state or specify that what kind of a business you want to carry forward. Now you need to specify the registered office which you will be you are the main offices of carry forward the business. You need to give the name and address of the each person who are to be partners after the incorporation. And I believe there is a specific provision has been created like you know as I mention before it is known as partnership identification number. And there is a procedure which you need to follow for applying this partnership identification number.

Then you need to specify the name and the address of the person who will be designated partner. And further matter you need to give other information which is concerning the propose partnership as may be prescribe by the authority from time to time. Now why I am telling the authorities may be it is not only the incorporating agency, but it might prescribe by some of your sectorial regulator that you need to disclosure the additional information while you are incorporating the LLP and in that case you need to do that.

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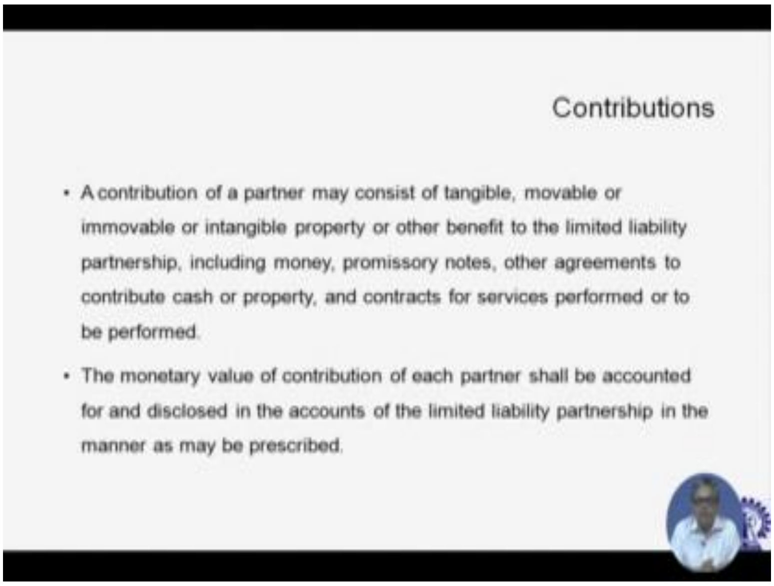

Now, the partners in the form need to contribute. And what are the things can be contributed in the form that has been prescribed in the law itself. And you will find it says that you can bring a tangible, movable, immovable property or are the benefit to the limited liability partnership, including money, promissory notes, and other agreements to contribute the cash or the property and the contracts services to be performed or to be performed.

Now, as I have told you before that you can bring many things as a capital to that particular form. One of the things may be the technology or the innovation which you have done and on which you want to build up your startup. As a partners you can bring your innovation, you can bring the technology, you can bring the no how. And in that circumstances if you are not able to pay any other capital that is sufficient for you to treat as your contribution in the partnership form itself.

So, there is a every possibility that you can bring different kind of interest, like in you here in it is said that is a service contract. You are the person who is a skilled in a particular profession, then in that circumstances you can only bring your service which is very important for development of that particular organization or maybe you may be expert in handling with some kind of a technology; that itself can be a very good contribution in that particular form.

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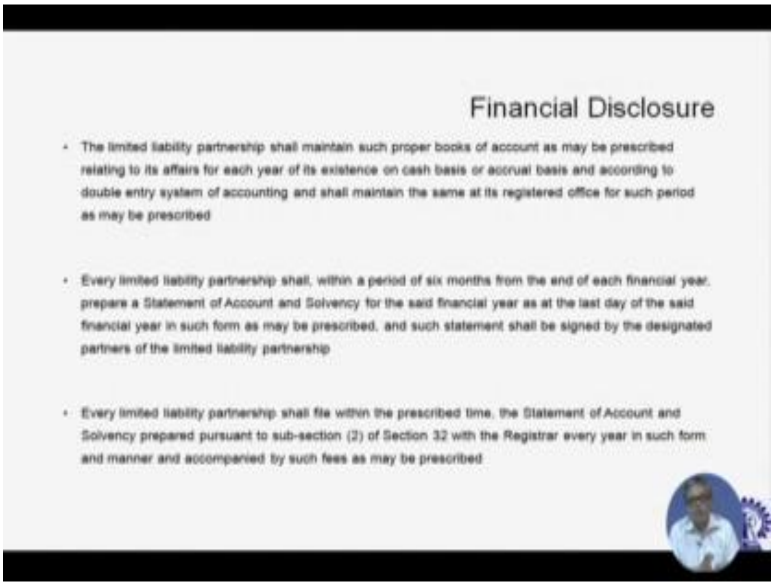

Now, let me take you to the next issue relating to the financial disclosure. Now this is a one of the additional requirement which the LLP is require to do. In these points the LLP is more tedious from the point of compliance then it is in partnership. Now financial disclosure includes that that the partnership is need to maintain the proper books of account as prescribe under that law. That means, what kind of capital you have, what kind of assets you have, what are the liability you have incurred, what are the loans you have taken and is that particular loan in a charge on the assets on the company. All this thing needs to be (Refer Time: 22:28).

Then you need to give this limited liability partnership within a period of 6 month from the end of each financial year you need to prepare a statement which is call a solvency a statement. That means, that your liability are not such that you are eroded, you are net worth, and you are unable to carry forward the business. Because, in case of the company you are not require to do this particular giving a solvency statement, but in case of the partnership as because these account in standard as not that severe. So, they need to give kind of a solvency statement. And solvency means that you are in a sound financial condition.

In case of the business it might so happen that you are all the capital as been layout and there is a lot of receivables you are suppose to get but those are in process, that does not mean that you are became insolvent. You are a going concern so you are laying your capital and further you are gaining out of that particular capital. So, whatever the state of your financial condition you need to disclose.

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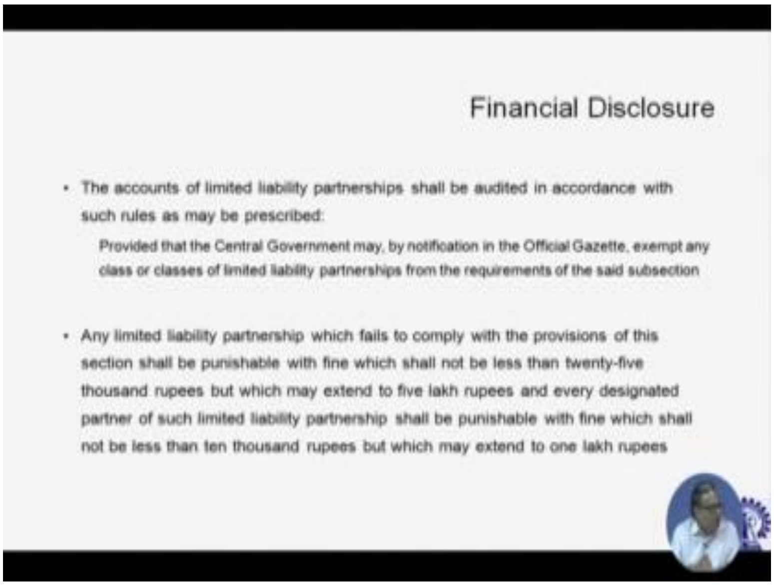

Now limited liability partnership shall need to audit the accounts accordance with rules as it is prescribed. So, you need to follow kind of account standard. Herein again you are compliance relating the accounting is higher than that of a partnership. Now if you are failed to comply with the provision of these particular sections then in that case you will be punishable.

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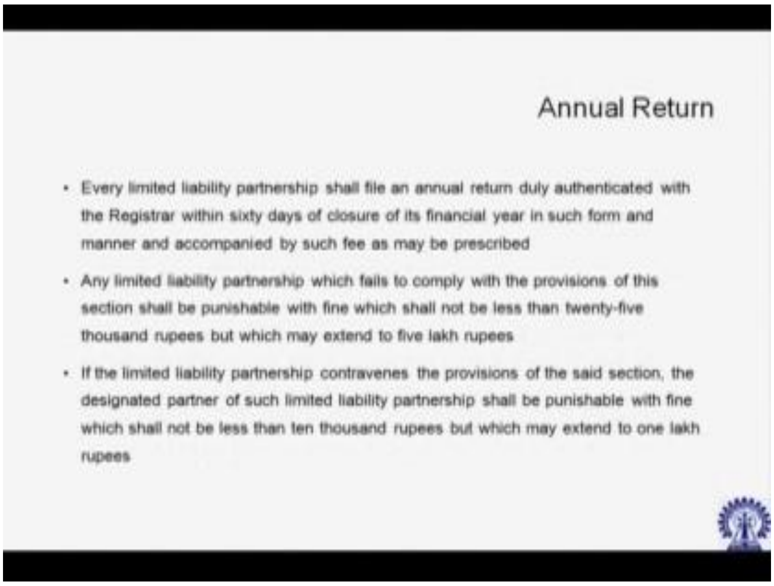

If you limited liability partnership need to file annual return which is to be authenticated by the partners. And this is one of the very important compliance for a limited liability partnership in comparison to partnership. And if limited liability partnership fails to comply this particular provision then it prescribes a fine for not doing this particular thing from 25000 to five lakhs of Rupees. Similarly, if there is a design a designated partner also will be responsible for this.

So, annual is basically a discloser in a public domain and whoever wanted to have a transaction with a limited liability partnership they will be always look for this disclosure annual disclosure in a very structure form. There is a lot of work as been done relating to how to structure the annual report and how best can provide the information in the annual report, so that we where the information seeker they can get this particular information in quick succession.

Though this work was more related to the companies, but even the LLP is annual report also matter of importance with a passage of the time because many of the informal sector organizations are now incorporating as a LLP. So, as a time will pass the significance of the annual report of the LLP will be increasing.

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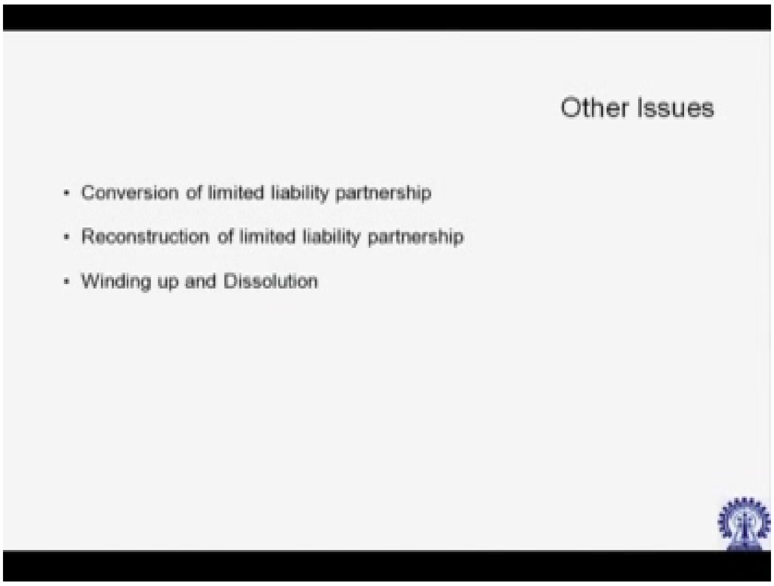

Now, there is a three other issues I want to talk with you very quickly. These are relating to the conversion of limited liability partnership and you can convert the limited liability partnership later on into a private limited company or a public limited company. In my previous lecture I have advise to you that it is always good if you have a capital crunch or if you do not have a man power to do a lot of compliance then you incorporate your business or startup as a limited liability partnership and later on you can scale it up as a private limited company or a public limited company. Now, one thing I like to put in your attention that in case of the limited liability partnership they cannot access the market to raise the fund. So, limited liability partnership cannot issue the shares in the market and raise the fund even if they are interested to raise it as a SME they need to go to the financial institutions then they can raise the fund, so these limited liability partnership cannot access the market.

Next important thing is adequate provision has been made relating to this structuring of limited liability partnership. Now limited liability partnership can merge with another limited liability partnership, there can be a compromise there can be arrangement in case of the limited liability partnership. Now the moment we talk about the compromise it is basically renegotiating the date of the limited liability partnership. So, if some kind of a date which is given to the limited liability partnership and over the years because of the loses they have accumulated lot of died then in that circumstances the limited liability partnership can renegotiate the date with the creators and they can take the time or they can have other arrangement for a structure in that. Similarly, it can go for other kind of restructuring and the adequate provision has been made relating to this particular type of restructuring.

Now limited liability partnership as I have talked with you in previous lecture that the partnership can be dissolve. Similarly, limited liability partnership can be wind up and dissolved. Now when you are talking about the winding up basically we are indicating about the process which needs to be followed. Please remember in case of the limited liability partnership it has come by the operation of the law, so if you want to put an end to the limited liability partnership or if you wanted to exit limited liability partnership then in that case again you have to follow the process of law. And when you are talking about the dissolution again it is equitable distribution of the asset which the limited liability partnership has developed over the years through the business.

So, there is a specific provision has been provided relating to that and even you can have some kind of provision in the incorporation document itself so that you can use that particular procedural for the purpose of dissolution or the winding up in addition to whatever as been prescribe under the limited liability partnership act itself.

Thank you.