

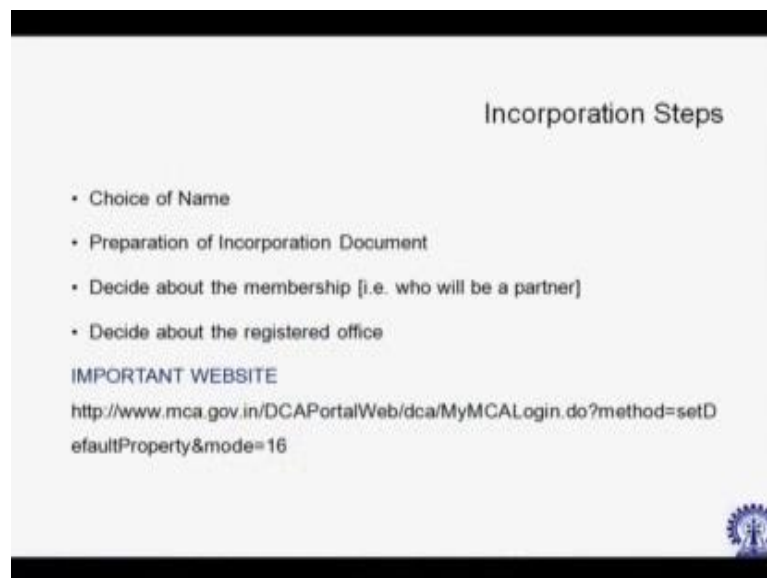
Legal Compliance for Incorporating Startup
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Lecture – 08
How to Incorporate LL.P

I welcome you in the next 8 lecture, regarding the legal compliance for incorporating startup, and I have in the module called incorporation of partnership LLP and cooperatives.

And in this talk, I will concentrate more on how to incorporate limited liability partnership. Now in my previous lecture, I talk on what are the loss relating to incorporating a limited liability partnership, and how you can govern that, what to the management issue can you restructure the LLPs, and at the sometime how to dissolve or wind up the LLP, but in these lecture my attention is more on how to incorporate a LLP, in the given framework which I have talked with you in the last lecture.

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Now, most important think in case of the LLP is choosing the name. And to choose the name you need to see that the name which you are finding it is not similar with the

existing limited liability partnership. And if you go further then it says, that it should not be deceptively similar or similar, with somebody state mark, or the business mark, or some kind of identification by which a business been identified, or the name of any existing corporate. And if you do something then in that case I mean if it is really similar to something then you might not get these particular name for the incorporation.

Now, there is a lot of you know development is happening in these regard, and you will find that I have given a URL in these particular, slide itself and you can rigid that particular URL of MCA, that is the ministry of corporate affair MAC 21, and they have provided a short of the link, wherein you can you can find out, that the name which you are looking for, is it available or not. Now there is a prescribe form is there you have to fill up this particular form, and you have to give a alternative names, and you need to apply to the register of the LLPs, to find out that that particular name is available for you to register your business.

So, choosing a name is a time taken process, and you need to do it carefully, because you know, many people who are related to the business and the marketing, they said that branding of an organization, is very important. So, branding also indicate the many thing, like you know how you pronounce the name, what is the spelling of the name, how it looks or visualize, what are the color combination so much so forth. So, possibly you might need to take some kind of a professional advice to develop this particular think, but before that, you have to choose the name, while you are choosing the name, you need to find out that the pronouncing or the looks of that particular words should not be simulate to each other.

So, like a let me give you some example, like you know you find that there is the organization called KFC, who basically you know in the food chain, and sometimes I found that people write in the same color and in the same font as AFC. So, sometimes it is very difficult to understand that it is actually the KFC their indicating or AFC because you might not able to recall that it was a KFC and now you are looking at AFC, but in a similar which looks similar. So, even these are called deceptively similar, and you should be careful, while you are choosing the name for your startup, and you want to incorporate your startup as LLP.

Then the second important thing is the preparation of the document. Now whatever incur what is the incorporation document, I have discussed with you in the last lecture. Now I am going to talk more on these particular incorporation document, because statutorily you need to give some information in this particular incorporation document, but it is advisable if you can detail out this incorporation document, and incorporate more information relating to the capital contributions, or one of it is structure, relating to the management relating to the transaction process as so, much so forth; even you know if you want to go for a restructuring of this company, you wanted to get a first partner admitted in to this particular system, and if you wanted to have a dissolution.

So, in my next subsequent part of my lecture, I am going to talk with you in detail relating to that. Otherwise statutorily you need to give couple of information, like who what is the name of your company, which will be your registered office, then possibly you need to give the object, if or the purpose for which you are incorporating the business, and then you have to give the name of the partner who was subscribing this particular incorporation document, and their detail and for the matter you have do name also who will be the designated partner.

So, these are the statutorily requirement, but these are the bench marking, but my advice will be you, should need to detail out many more, then whatever the statutorily requirement is. Now, again there is a need to decide about the membership. Who will be the partner of your organizations? Now when you are talking about the engineering startup, the important thing is that there might be a many people, who are the partly to that particular innovation or engineering, you know innovation. In their circumstances you have to decide, that are you going to take everybody, as the partner in your business, or some people who might not be interested in the production of that, from that particular technology which you have developed, but rather they are interested to exit by getting some kind of a remuneration, or they are interested only for a feature remuneration from that particular product. So, in that circumstance, my advice will be do not take that particular person as a partner.

Now, I am going to discuss with you, but at the sometime, you might need to take somebody as a partner who is going to finance, you know, set up finance your

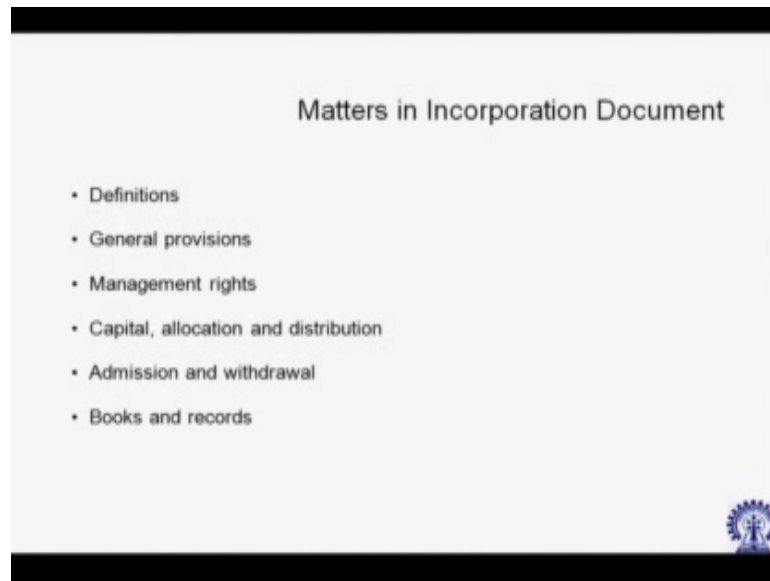
organization or startup. Then in that case, you have to see that in what terms and condition he is joining, that particular partnership form or LLP. So, while your choosing the partner you should do a proper due diligence, or proper exercise relating to the person, who is coming in to that LLP or in that particular organization.

Now, decide about the registered office. Because the registered office it is a very important from different prospective. It might be important because, you know there might be approximately of registered office with other financial institutions, it might be ah, may might be important because you are doing up a business in a particular market, and you should have a registered office, you know near to the market or within that particular market itself. So, there is a several, you know, extraordinary or maybe you are you are incorporating the business of a particular nature, which has a particular ecosystem or infrastructure building in a particular place.

Like people say that if you wanted to build up, you know engineering startup, then the Bangalore possibly one of the good options. Because you will find, because of these you know engineer startup innovation incorporation, there is a already kind of a infrastructure has been created, by the state or by the local community, and which is going to facilitated to incubate your startup in that particular place.

So, choosing the registered office for your LLP is one of the important aspects for the purpose of your business.

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Now, in my subsequent talks, or subsequent part of my lecture, I am going to concentrate more on the matrix you should incorporate, in the incorporation document. Like I have already told you that there is some statutory requirement, which you need to incorporate in the incorporation document, but beyond that you need to have a detailing out in the incorporation document. So, your incorporation document should define the terms, which you are going to use within the cooperation document.

Now, many of the time, some of the word which you are using, and the incorporation document I have statutorily defined; that means, is defined in the act. So, in those circumstances you might not require to define that particular word, but if you want to additionally attribute certain meaning, with that particular word in that case, you should define that particular word. Now many of the time you are interested to define the rights and the liabilities, of the partner in these set up, and which is something beyond or more than whatever has been prescribed by the statute.

So, I will suggest you to define those particular words. So, what I am trying to drawing your attention, that something which is not used previously by the act or other, you know by loss. Then in that circumstance it is advisable to define that word, which you are going to use it. Because if you are not using, you are not defining the word there is a

every possibility that it might give two three many. And when there is a disputed arise, then if you want to interpret your incorporation document or the constitution document it might lead to for the dispute.

So, to avoid the dispute in the future, it is advisable that you define the word which you might use in that particular document. If it is not otherwise define statutorily or within the act, then you should create general provisions. General provisions will spell out in generally, the rights and responsibility. And the extent of the business this particular organization or interested to carry forward, and it is advisable that if you can do it and under the subheadings, because many of the time you might have, you know the main business which you wanted to incorporated and to support, the main business or you wanted to have, you know further business which you wanted to start with. So, in that circumstances you need to define that what are the things you want to do, and in that circumstances what will be the rights and liability of your partners.

Now, if somebody are, you know promising for the additional capital in the future, and in that circumstances if there is a change happen, then how the relationship will be defined in these circumstances, you might put it into the general condition even though will generally deal this particular provision, into specifically under the under ownership a capital conclusion allocation and distribution, but you can you can have some kind of a general clauses relating to that in this particular general provisions.

So, what I am telling, that if you do not want to mention something very specific, or you wanted to have some kind of a general conditionality, which you cannot foresee at present, but you think that well this is important to have it, then in that case put it into the general provisions. Do not put it under specific headings. So, general provisions you can keep on adding the things, which you are not putting under the specific headings. Then the next important think is a management right. Now as I have told you that you, now in case of LLP, there is a designated partner. And law imposes the right on the designated partner that you know, he need to take part in the compliances.

And once he is taking part in the compliances, he is basically carrying out the day to day activity. But you can define that what are the activity these particular designated partner

can do, what are the activity you need to have a majority partner concerned, and in what are the activity all the partner has to agree. So, you can have a detail management right, who can exercise what kind of right, in which matter the matter need to be elevated to the further level, and in which matter you know only the majority consistence can work.

Similarly, you can have you know partnering of what detail out relating to the capital contribution, allocation and the distribution. Now initially you might start with the venture with the small capital, but once the venture grows, you might need for a new capital. So, in that circumstances, you might you know at meet some of the partner who can bring more capital in the venture, now if the people are bringing the more capital in the venture, then what will be right of existing partner. Will their right be a diluted, or will it going to affect the management right, or how you are going to treat this particular newcomer, will the newcomer require to give a premier when he is admitted in to this particular coming in to this particular partnership.

And if there is a profit which you are making, and some of the profit you have keeping for the growth, and some of the profit you are distributing amongst the amongst yourself, then what is the ratio, or up to what point of time you can keep the profit a for the purpose of the growth, and after what point of time you should distribute this particular profit, or you might even thing that well you can continuously distribute the profit without keeping anything for this particular growth, because any way after some point of time you are going to convert this particular organization, into private company, and then you might sell your venture to somebody else.

So, you do not wanted to you know reemployed in to the growth, because growth will be a natural phenomena, or when the growth will picked up you have going to sell this particular organ. So, whatever the your decision is, you know what I am trying to drawing your attention it should have a provision in place because otherwise this might create a confusion or you know dispute in the feature within among yourself.

Similarly you know, you do you have kind of a criteria for admission, as well as withdrawal. Let us some of the criteria, I have talked about relating to the admission when I said that you have do you require to bring the premium or to give do you require

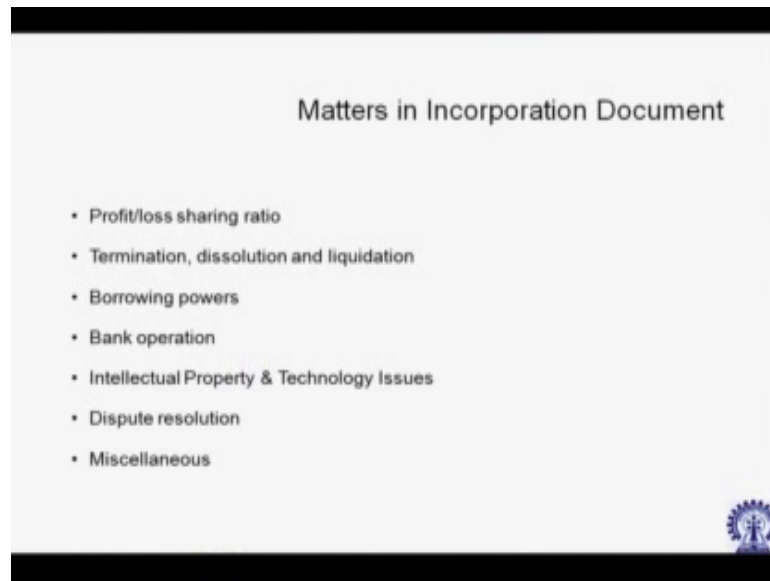
to give premium at the time of admission, he apart from that, you might also define that how can be a partner in to this particular you know partnership form, you might simply say that there is our particular category of financial ventures, can be a partner in to this thing, or you can even say that there is a kind of a venture capitalist, how can be a partner into this particular thing

Or even you can say that you are not going to allow any ventures to be a partner into these partnership forms. So, whatever you decide, you need to define this particular thing at the same time. If you if somebody is withdrawal or going for withdrawal, you can decide the time line that, you know after this particular investment one has to stay back with investment for, this particular time line and before that one cannot withdraw, and at the same time you can also define the procedure relating to the withdrawal; that means, do you require to you know offer these, at the time of the withdrawal your stake to the existing people, and if it is of the existing people do not accept this particular offer, then in that circumstances can you offer it to the third party, and if the third party is admitted what are the qualification that third party you need to have, before they have been offer this particular stake, where the stake of the person who is diluting his stake.

So, you know these are the very contentious issue, because many of the time if you do not define this, it might, you know, affect your organization or the functioning or the organization in the future. Then further, you need to maintain the books and records as that mean prescribe by the statutorily itself, and then you can also further define, in that who can have a access to a information, in generally, you need to give to accept of the information to all other partners, but in circumstances, where the stake is got diluting, then can you give this particular access to other person, or when the partner has transfer the interest temporary as the part of the security, will you going to give access to this books of account.

So, whatever you do, you have to, you know, define that particular issue within your books of within your incorporation document itself. Now then you can talk about the sharing of the profit, profit and loss ratio.

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And you know this particular think can go with the different kind of a calculations, because please do remember, which I have discussed with you in the last lecture, that whenever the partners are making the contribution, and as the statute provide were not necessary that all the time you have to bring the cash, or the kind which is equivalent to cash.

So, if that is so, if you are bringing the technology, or if you are bringing some other kind of a expectation into this particular form, how you are going to get the profit, or if there is a loss happen then how you are going to share that particular loss, or if you think that well you are not going to share the loss at all, or is it possible to have that kind of, you know, remedies available with you. So, whatever the condition is that, you need to you know define it within your incorporation document.

Then you can talk about the termination dissolution and the liquidation, you know in what circumstances you wanted to put to an end your organization. Do you or you incorporating the organization for a particular specific purpose, or you think that will you are incorporating this particular you know LLP for a specific time timeline, specific duration, or specific matter to achieve, then you are going to sell this particular LLP, and or you might to you want to convert this particular LLP. So, if you have something, it is

always you know talk about if you have kind of a timeline planning relating to this particular LLP.

Now relating to the borrowing power, that in what circumstance you can borrow the money, and from which are the people from whom you can borrow this particular money, you can defined that you can restrict for the companies you know restrict the LLPs, or the you know designated partner or those people who are in the management of this LLP, that in which circumstances they will be allowed to borrow, and in what are terms and condition, that you can lead down within your you know matter of incorporation.

Then there can be a banking operation. Banking operation means who has a right to operate the you know bank account, or the account which is there in the financial account; that means, what I am talking about that if there is any financial transaction, who is going to be incharge of that particular financial transaction, or are you going to have kind of a division, for this particular financial transaction so much so forth that you can defined within your incorporation document.

Now, next important issue is relating to the intellectual property and that technology issue. Now if you are bringing the intellectual property, then in what terms you are bringing the intellectual property in that particular form, are you giving it has a exclusive license, or you giving it as a non exclusive license, or your observing that particular technology within the from itself, and if somebody is further developing on that particular technology, then what kind of right those people who are there in the form at the time can enjoy, or you are going to have that exclusive right on the development and the promotion of that intellectual property, or do this particular form has a right to transfer the intellectual property to the third person, and to on the revenue out of that particular think. Or do this particular form can further acquire the new kind of intellectual property, or the technology and what terms it can be acquire can they go for a joint venture in the future with similar kind of a form.

So, whatever you wanted to do relating to the technology, and the intellectual property that need to detail out. And then the important thing is the dispute resolution. It is always advisable that you know, whatever the dispute issue which you have, you should have

kind of a mechanism to resolve that. Now the statutorily itself provide kind of a mechanism for resolving the dispute, but in addition to that you can have a mechanism implies. You can even define that what kind of a dispute you can resolve by your own, and what kind of a dispute you can refer it to the external agencies, which are beyond the organization. Or you can also recommend for a particular type of set up of dispute resolutions among the members of that particular organization too.

And apart from that, you can have a many miscellaneous provisions, it may be it is relating to the business operation, where you wanted to operate the business, how you can scale your business, it can be relating to entering into a new market, it can be relating to the strategic alliance for you which you wanted to form, it can be relating to managing the regulatory responsibility so much so forth. So, whatever you think potentially going to have an impact over your business, you can detail out all those particular thing in the incorporation document itself.

Now, apart from that, as I have told you, that this is a the legal entity of or it is a more a formal entity, in these particular case you need to manage the compromise requirement, which I have talk with you in the last lecture of mine, also and at the sometime you also require to, you know I mean file whatever the requirement to be fail with the different regulator in to this particular think.

But one think I like to tell you, that you know you do not have a flexibility, in case of the LLP relating to raising the fund, as you have in case of a public limited company, but you can take you know somebody as a financier or the venturous, or as a partner in to your form for financing in your organization.

Thank you.