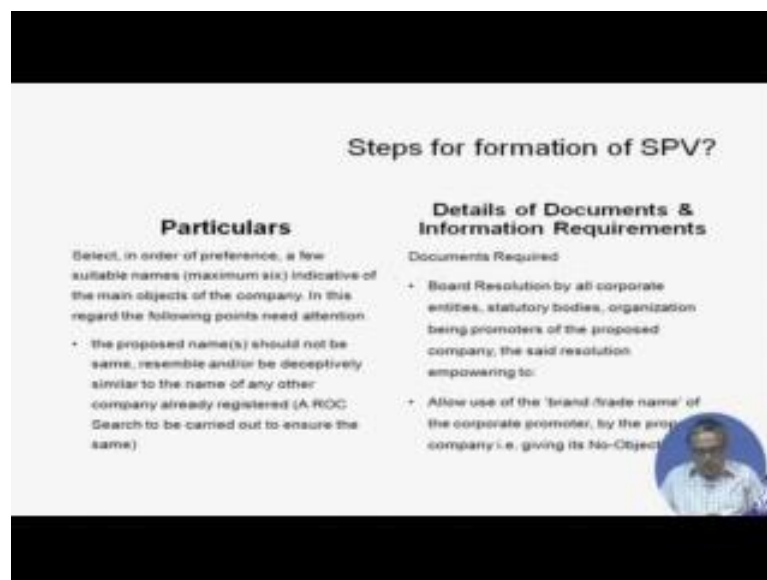


**Technology Transfer through Joint Venture**  
**Prof. Indrajit Dube**  
**Department of Humanities and Social Sciences**  
**Indian Institute of Technology, Kharagpur**

**Lecture – 17**  
**Formation of SPV**

I welcome you in Lecture 17 regarding Technology Transfer through Strategic Alliance and Joint Venture. I am in the Module of Special Purpose Vehicle, and I will specifically concentrate my talk on Formation of Special Purpose Vehicle.

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Now, in previous lecture I talk with you how you should prepare yourself for formation of special purpose vehicle. In this particular lecture I am going to take through some of the steps which should do while you are going for the formation of a special purpose vehicle.

Now, if you look into my power point slide then you will find one side I have wrote the particulars and another side I have wrote the details of the document and the information required. So, I am going to talk with you the both, but first I am going to talk with you the particular and then I will say it that what are the supporting document you required for a this particular purposes. Like, the first thing which you do is need to have a name of your company or the special purpose vehicle. And further matter you need to have a suitable mix of six names and these particular name should not be resemble with the

existing name of any other company, which is already in existence or which is doing the business into the market.

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**Steps for formation of SPV?**

<b>Particulars</b>	<b>Details of Documents &amp; Information Requirements</b>
<ul style="list-style-type: none"><li>• The proposed name(s) should not violate the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950</li><li>• Apply to the concerned ROC to ascertain the availability of the proposed name in Form 1A of the General Rules and Forms along with a fee of Rs. 500/-.</li></ul>	<ul style="list-style-type: none"><li>• Subscribe to the equity share capital of the Company stating the extent and manner of shareholding &amp;</li><li>• Make the necessary application with the Registrar of Companies (hereinafter referred to as "ROC")</li></ul>

Now, this particular name should not violate the provision of Names and Emblems Act. Now in Names and Emblems Act you will find that some of the things are prohibited like using the word president or name of the existing president or name of the prime minister or the word prime minister. There is a series of word you will find which is been prohibited under the Name and Emblems Act, so you should not use that particular work word in the name of your SPV or the company.

Then you should apply to the ROC in Form 1 A and you generally pay the fees of 500 Rupees. Now please do remember these particular facilities are available now online you can go to the MCA 21 website and check that particular name is available or not. This is becoming quite easy access. And in online also you can apply for availability of name two.

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**Steps for formation of SPV?**

<b>Particulars</b>	<b>Details of Documents &amp; Information Requirements</b>
<ul style="list-style-type: none"><li>• In case the proposed name(s) is /are not available, apply for a fresh name in reference to the same application</li><li>• After availability of name, the same is valid for 6 months from the 'date of grant of name' &amp; the proposed company is to be incorporated within this period</li></ul>	<p>Information Required:</p> <ul style="list-style-type: none"><li>• Name, Occupation &amp; Complete Address of one of the Co-Promoters, who shall sign the said Form 1A</li><li>• Name of at least two promoters</li><li>• State wherein Company's registered office is proposed</li><li>• Category of Proposed Company – Public or Private</li><li>• Proposed Name(s) of the Company &amp; a brief significance of the said Name(s)</li></ul>

Then you should if you find that particular name is not available then you should go for application of a place name. And after availability of the name that particular name is valid for the 6 months, so within the 6 month you have to file all the registration document without a (Refer Time: 03:49). Now to do this particular thing you need to have couple of information and I am going to deal with you with you relating to this particular information.

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**Steps for formation of SPV?**

<b>Particulars</b>	<b>Details of Documents &amp; Information Requirements</b>
<p>Select, in order of preference, a few suitable names (maximum six) indicative of the main objects of the company. In this regard the following points need attention</p> <ul style="list-style-type: none"><li>• The proposed name(s) should not be same, resemble and/or be deceptively similar to the name of any other company already registered (A ROC Search to be carried out to ensure the same)</li></ul>	<p>Documents Required</p> <ul style="list-style-type: none"><li>• Board Resolution by all corporate entities, statutory bodies, organization being promoters of the proposed company; the said resolution empowering to:</li><li>• Allow use of the 'brand /trade name' of the corporate promoter, by the proposed company i.e. giving its No-Object</li></ul>

First one is the board is required to pass a resolution in their respective meeting like you know as I have told you in case of the joint venture, the joint venture partners or there or the sponsor of joint venture are there that means who are interested to promote this particular joint venture so they have to you know pass a resolution in their board itself. Many of the time you will find that the companies are interested to put their name or the brand name in the name of the new joint venture company. So, if it is a particular names is for example if it is a name of Infosys, and Infosys is doing the joint venture with another company say IBM then in the joint venture company they might like to keep the Infosys IBM joint venture private limited something like that or may be Infosys IBMm, because that it can immediately give kind of reorganization or the band value to this joint venture.

In this particular trend you will find quite common in case of the insurance company who are delivering the insurance product in Indian market like you will find that these are for the Bharti AXA, then you will find TATA AIA, because only in case of the financial instrument people generally trust a particular brand. So, wherever the question of trusting the band comes they generally put this particular put the companies name in that brand itself.

Then you need to talk about subscribe the equitation capital of the company starting in the manner and share holding and then the make the necessary application with the ROC of the company. So, these particular two things that is what kind of a investment you have going to make in the equity, as well as can they use the brand name you have to take the decision in the board. And then you also need to decide that you are going to apply in the ROC and who is going to apply this particular thing.

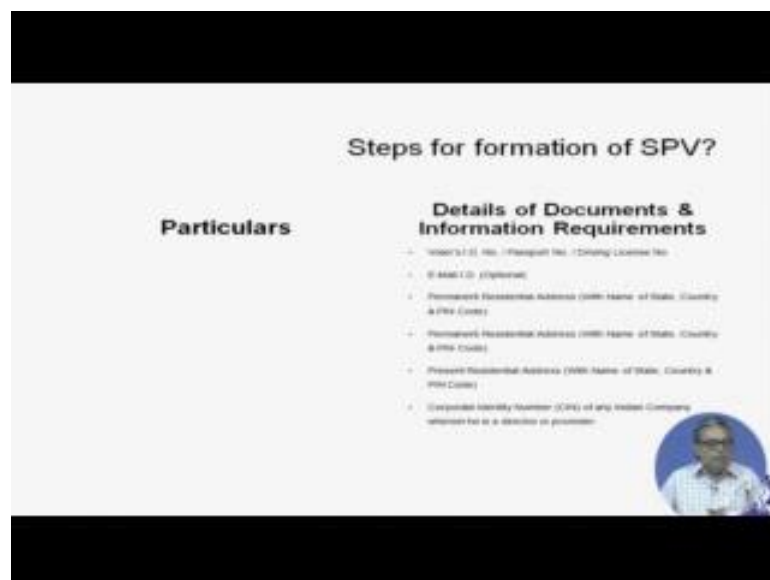
Now the information which is required to provide is name occupation and complete address of the co-promoters. Co-promoters is generally the joint venture partner or the sponsorer in the joint venture and one of them need to sign in Form 1 A, that means which you are using for applying the name of the company. Then you need to name of at least 2 promoters if it is a private limited company and 7 in case of public limited company. And promoters are means are those people who are going to subscribe the memorandum of the association and article of the association.

I am going to talk about what is the memorandum of the association and article of the association little later. These are known as the formation document or you can even call them constitution document, because how the company is going to run and what are the objectives with which the company is going to run you put everything into this particular constitution document.

Now, you need to provide this information in which state you want to register your company. Then you need to propose the category of the company, either you want to propose is as a private limited company or a public limited company. Then you have to propose it what kind of a reliability these promoter is going to share, is it a limited reliability or reliability by the guarantee or it is a limited reliability by shares as well as the guarantee or it will be unlimited reliability you need to decide this particular thing. Now it is the public limited company then you have to decide will it be a listed company or it will be a unlisted company.

Now you need to propose the brief significance of the set name that why we are proposing that.

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In generally it is advised that the objective clause should have some kind of the relation with the propose name of this particular company. And your companies name should indicate you of what kind of a business you are carry forward. Like you have Incorporator Company which is called Thomos co travel private limited company and

you start doing the business in software, then you know it is a mismatch. So, there should be some kind of a relation between your objective and the name of the company.

Now further more you need to give the voter ID, passport number or driving licence number those people who are putting their name in the subscription of the company, email ID is optional, you need to give the permanent residential number state and country, then permanent residential number with state and country and then present residential number, and then you need to give a corporate identification number for any Indian company while in that gentleman is director or the promoter. Now this corporate identification number is created for last few years and every company are giving unique identity number and through that particular identity number the companies are been identified.

So, any issues relating to that particular company are basically tracked down by this particular number itself. So, if that particular company is deploying any one of its officers or the manager or the director or the promoter of that particular company is promoting the same company then in that case you need to even give not only the director identification number if he is a director with that you need to give corporate identification number so that you know it can be track that who is the director and which company promoting this new venture.

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**Steps for formation of SPV?**

<b>Particulars</b>	<b>Details of Documents &amp; Information Requirements</b>
<ul style="list-style-type: none"><li>• Obtain Director Identification Number (DIN) for all proposed directors, if they are not having the same.</li><li>• The said requirement is mandatory for all proposed directors, without which the company incorporation formalities cannot be proceeded (w.e.f July 1, 2007)</li></ul>	<p><b>Documents Required</b></p> <ul style="list-style-type: none"><li>• Copy of Identity Proof (Passport, Driving License, PAN Card etc.)</li><li>• Copy of Address Proof (Passport, Driving License, Electricity Bill, Ration Card, Telephone Bill, bank Statement etc.)</li><li>• Two Passport size photographs</li><li>• Copy of Valid Passport (mandatory in case of Foreign Nationals / NRI's)</li></ul>

Now, you need to obtain the DIN that is the next step, the full form of the DIN is Director Identification Number. Director identification number is the required for every company who wanted to promote the company, because at the end of the day you have to propose the name of directors and whoever the name you propose the name of the director he should have a director identification number. So, you should get that particular identification number. And in the other side of my slide you will find that I have list down all document which is required for this particular purpose.

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**Steps for formation of SPV?**

<b>Particulars</b>	<b>Details of Documents &amp; Information Requirements</b>
	<p><b>Note</b></p> <ul style="list-style-type: none"><li>• In case of Indian nationals, the said documents are to be attested by a Notary Public, Practising CA, CS, CWA)</li><li>• In case of foreign nationals / NRI's, the said documents shall have to be notarized by the Notary of the Home Country of the proposed director.</li></ul>




Now, please note in case of the Indian national the said document are to be attested if that particular person is not staying in India by notary or practising CA or other this particular person. And if he is a foreign national or NRI then in that case that notarization has to be done in the foreign country or may be notarization can be done even in India also.

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**Steps for formation of SPV?**

<b>Particulars</b>	<b>Details of Documents &amp; Information Requirements</b>
	<ul style="list-style-type: none"><li>• The attesting authority must indicate the following while attesting the documents – Name in full, Signature, Designation &amp; Registration No.</li><li>• Submit a Translated Copy (duly attested) in case the original document is in a language other than English or Hindi.</li><li>• In case Identity Proof does not have date of birth and/or Father's name, or in case the same does not tally with the DIN Application Form, additional proof (duly attested) shall have to be submitted.</li></ul>




Now, while attesting this particular document the attesting authority must indicate full name and the signature and the registration number, then you know submit that translated copy if it is in other language then that of a Hindi and the English, and you know in case of the identify proof you need to give birth certificate of that particular person if he is a natural person and if it is a company then in that case you can put the DIN of that particular person who is the director of that particular company with the CIN which you need to submit with this.

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**Steps for formation of SPV?**

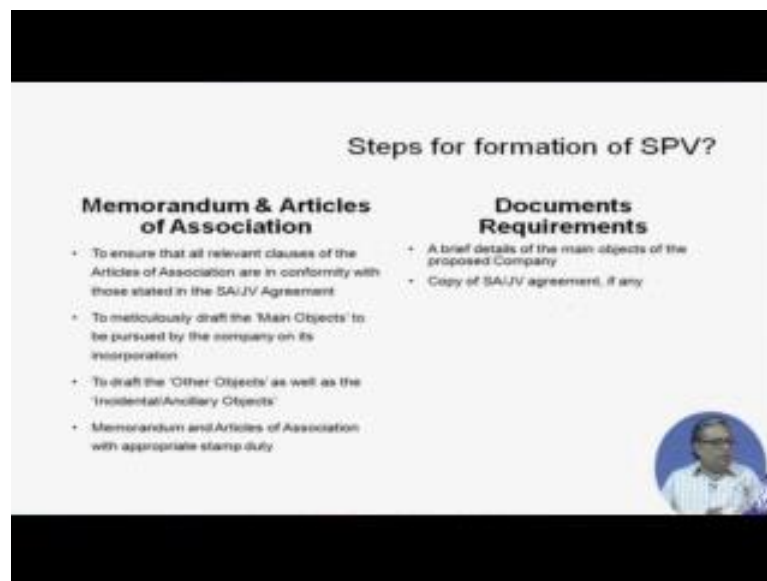
<b>Particulars</b>	<b>Details of Documents &amp; Information Requirements</b>
Obtain Digital Signatures for at least one proposed Director of the Company, for the purpose of signatures /attestation	<p><b>Documents Required</b></p> <ul style="list-style-type: none"><li>• Copy of the Identity Proof (Passport / Driving License etc.)</li><li>• Copy of Address Proof (Electricity Bill, Ration Card, Telephone Bill etc.)</li><li>• One Passport size photograph</li></ul>





Now, next one is the important thing is that you need to obtain the digital signature for the person who is going to be the director of the company. And in other side I have listed down what are the proof is required for getting the digital certificate, because digital certificates in the mandatory because most of the compliance document today you need to file electronically. And if you want to file those particular documents electronically then in that circumstances you need to do a digital authentication.

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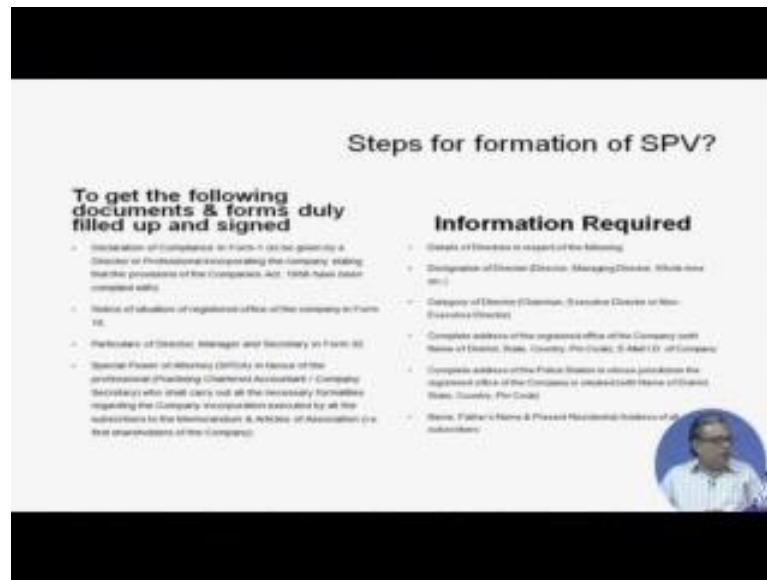


Now, next step is formation of Memorandum of Association. In the Memorandum of Association please ensure that all the relevant clauses in the joint venture or agreement is been incorporated. So, whatever the objective clause of or the main objective clause in SPV's document you need to draw it from the joint venture whatever you have decide in joint venture agreement or strategic alliance agreement.

Now, what are Memorandum Association and Article of Association I have told you s in my previous lecture, but let me repeat now. Memorandum of Association Article of the Association is the formation document which is required for every company whenever you want to incorporate a company. And Memorandum of Association is a comprises of information like, register office, name of the company, then what is the main objective, liability clause, then the subscription clause, all those particular thing. At the same time Article of the Associations is comprises of the information relating to how to manage the company. So, you need to detail out all this particular thing.

So, document require in this particular case are generally the joint venture agreement, but please do remember joint venture agreement is not required to submit while you are submitting all the document to the ROC, but you have to draw the information or draw the objective clause from this particular joint venture agreement.

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Now, next is you need to go for many of the declaration like you have to get the declaration of the compliance in the Form 1 and this particular declaration of the compliance is generally given by the professionals or the director who is going to be director of that particular company. Then you have to give the notice relating to the register office of the company and there is the Form number 18 which I have given to you.

Then you need to have a particular director, manager or secretary and their name should be mentioned in the Form 32 who is going to discharge this particular function. And if you are incorporating this particular company who shall carry out all the necessary formality you need to give him a special power of antonyms generally. This particular document are submitted by any chartered accountant or a cost accountant or the many of the time you will find company secretary or the lawyer, then they need to be given a special power of antonym so that they can submit on your behalf.

And again in the other side you will find I will detail out what are the information you need to give. And one of the important thing is that you need to tell that within which

police station (Refer Time: 17:09) your company register office will be. And you might find unusual because there is some kind of a criminal while charges can frame against the company and because of that you need to give this particular information.

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**Steps for formation of SPV?**


**To get the following documents & forms duly filled up and signed**

**Note**

- In case of foreign nationals, if the person is available in India then a Special Power of Attorney (SPA) executed on a non-judicial stamp paper of requisite value is sufficient and there is no need of any further attestation(s). However copy of the passport will be required for verification.
- However, in case the foreign national is not available in India then the Special Power of Attorney shall have to be executed on a plain paper and witnessed by the Councillor General of the Indian Consulate situated in that Country. The SPA holder shall further sign the SPA and appropriate stamp duly affixed on it.

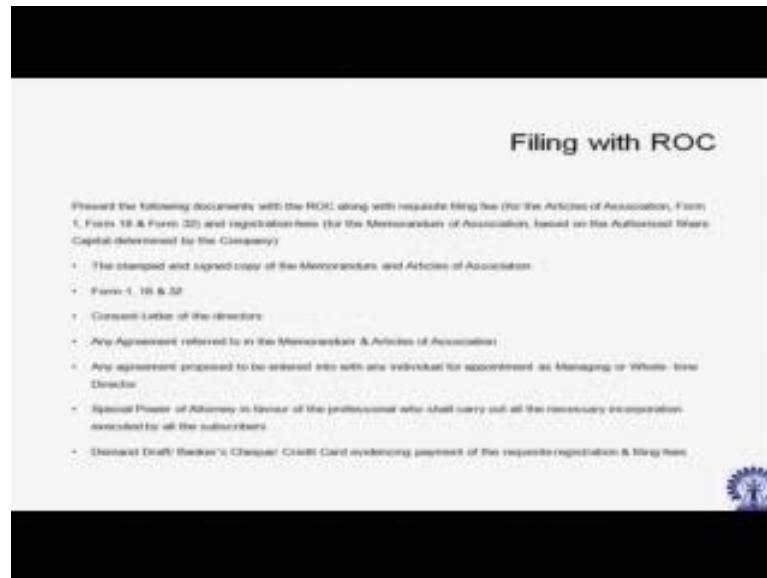
**Information Required**

- Consent Letter(s) signed by each director in the prescribed format



Now, further more if it is a foreign national and if the person is not available in India a special power of antonym is need to execute on non judicial stamp paper of a valid requisite specified further into this document, and the copy of the passport will be required for the verification. Now in case of NRI as well as the foreign national special power of antonym shall have to be executed by the councillor general of the Indian Abbesses situated in that particular country. In these particular circumstances if you look at other side you need to give the consult letter from the director, that means the person who is going to be a director of that particular newly form company.

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So, this is important in case if you are creating a joint venture with your foreign partner and there will be possibility that one of or number of board member will be of foreign national. In that cases you need to do this particular exercise whatever I have shown in the last slide.

Now, in this particular slide what I did I have basically given the state what you need to do and then I have given name of the forms which you are going to fill it up, and then you need to get a consult letter from the directors who will be the director after the incorporation of the company any agreement which is referred in the memorandum and article of the association. That is joint venture agreement or strategic alliance or which I have told you in my previous lecture that if you have (Refer Time: 19:29) agreement and under that you have a several specific agreement in joint venture then I will advise you that you should submit all the agreement while you are submitting the memorandum and article of the association to the ROC for consideration.

Further more if you are entering to any agreement with the CEO or managing directors or CEO or CFO then in that case those particular agreements you should submit before the ROC, because these are the key agreement and the key persons who are going to drive this particular company on the incorporation. So, this particular information should come in the public domain, because whatever the information you are filing with ROC these information will be in the public domain. You need to give a special power of

antonym to the professional who is going to comply or submit all this particular document on your behalf. And you need to pay the filing fees or the registration fees by the cheque.

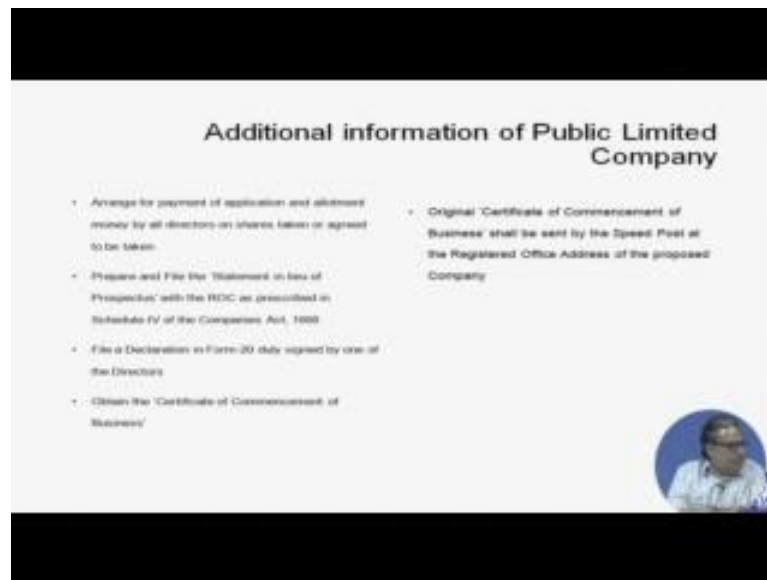
Please do remember that your registration fee is depending on what should be the authorized capital of yours. This is important for you, because if you are not required huge amount in the initial time as the authorized capital you should not put it as authorized capital. So, you should optimize on these particular font so that you do not have to pay unnecessary registration charges or filling charges at the time of incorporation.

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Now, once you file all this particular document register will issue your registration incorporation certificate and in generally in incorporation certificate sent by the register in the register office by the speed post. Once your company is received the incorporation certificate or the date it is mentioned in the incorporation certificate is the death date of your companies birth and this an important date you need to refer it many of the compliance document at this particular date again and again.

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**Additional information of Public Limited Company**

- Arrange for payment of application and allotment money by all directors (or shares taken or agreed to be taken).
- Prepare and File the 'Statement in lieu of Prospectus' with the ROC as prescribed in Schedule IV of the Companies Act, 1956.
- File a Declaration in Form-20 duly signed by one of the Directors.
- Obtain the 'Certificate of Commencement of Business'.
- Original 'Certificate of Commencement of Business' shall be sent by the Speed Post at the Registered Office Address of the proposed Company.

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Now, addition information is arrange a payment for application allotment of money by all the directors (Refer Time: 22:10) had taken or agreed to be taken. Then prepare the statement in leave of prospectus if you are going for public subscription or if you are going for initiate public offer, then in that case you should do this particular thing or even if you are going for private placement then also you should prepare. Then you should file a declaration Form 20 by one of the directors that all this thing has been carried properly and you need to have a commencement of business certificate in case of public limited company.

Now, in these particular slides some of the provision which I have mentioned it is of old ct that is 1956 Act, because under the new act there is some notification still due so it is governing by the old act and possibly after few days you will find new form number as well as new for procedures. And some of the provisions is withdrawn like you know this by the amendment or commencement of business certificate this is this particular concept is withdrawn now from the static book, but I do not think this particular withdrawn provision has been notified. So, the series I have mentioned it here. Again the commencement of the business certificate will be sent to you by a post itself.

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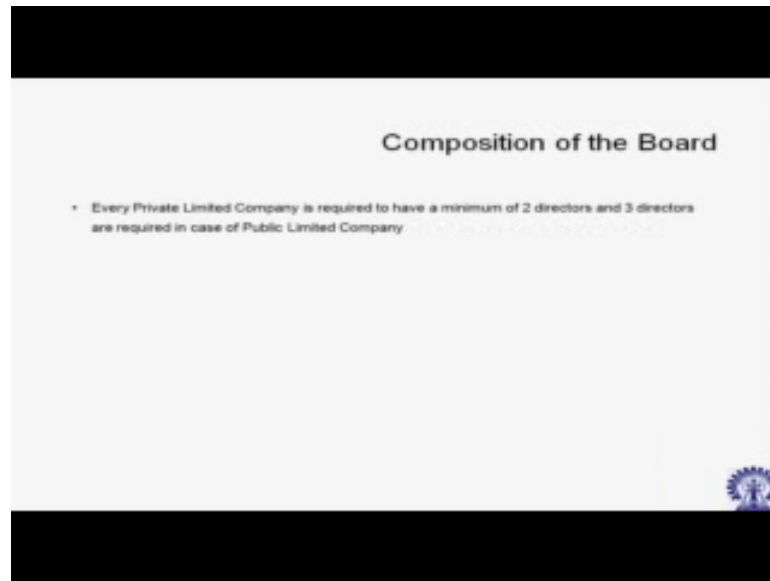
### Capital Structure

- The proposed Company can have any amount as Authorised Capital and a minimum of Rs. 1 Lakh (for Private Limited) / Rs. 5 Lakhs (for Limited) will be required to incorporate the Company
- The Registration fee is totally depending upon the Authorised Capital of the Company
- A stamp duty @0.15% of the Authorised Capital is also required to be paid if the Registered Office of the Company is situated in Delhi and can be paid online on the Ministry of Corporate Affairs website
- A.D.D./Cheque in favour of "Pay & Accounts Officer, Ministry of Company Affairs, New Delhi" payable at New Delhi

Now, in case of the Capital Structure if the proposed company is authorized capital is a 1 lakh if it is a private limited company and 5 lakhs in case of public limited company. But again these there are an amendment in the present act and they have actually withdrawn this particular authorized capital minimum amount of this authorized capital. But I do not think that it is yet notifies. So, that is the reason I have given this particular old information, because accordingly the companies has been allowed to be registered.

Now, notification means you know there might be amendment in the act itself, but until unless that particular amendment is notified in the official gadget it is not come as a law or is not come as the operation of law. Now I have talked with you relating to what be the authorized for a company and then you need to pay everything in pay an accounts officer a minister of corporate of a New Delhi and all this particular thing is payable in New Delhi only.

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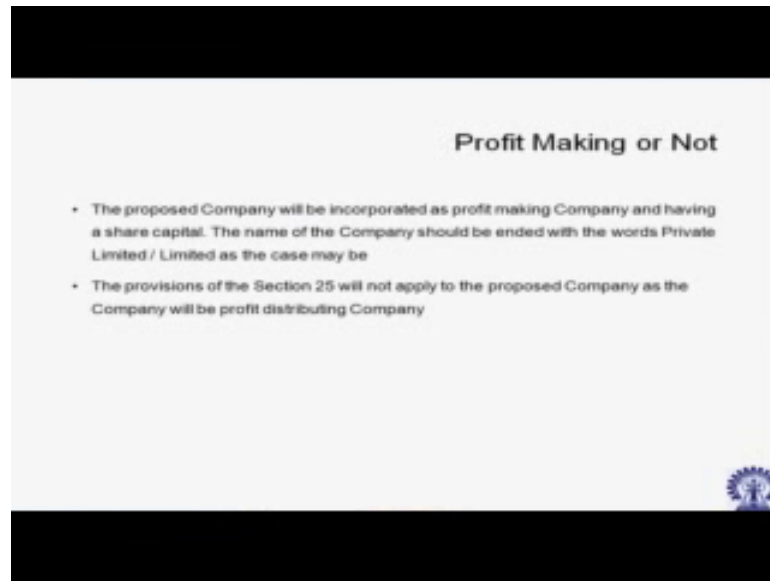
You need to discuss about the Composition of the Board. And in every limited company is required to have a minimum 2 director if it is a private limited company and the 3 directors if it is a public limited company. Here in if you have mention in detail in the joint venture agreement that which are the kind of people is going to comprise your board then in that case it should move accordingly and you should have also mentioned this particular agreement joint venture agreement under the EOE of the company.

So, whatever has been mentioned in the (Refer Time: 25:50) number of people in your board of director you should go ahead accordingly. So, in the board of director there might be some people who are the executive directive, some people are non-executive directives, some people are independent directive. So whatever the composition you have proposed accordingly you should appoint the director in the board.

Now please do remember I mean this was a pretty old provision now this provision is not you know replicated, but let me tell you because it is still in the static board. In case where the name of the director is not mentioned the promoter who is subscribing the Memorandum and Article of the Association he will be a defold director of the company.



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Now, you also need to say that this is the profit making company or not a profit making company. If it is a non profit making company then you have to additionally apply for a licence under Section 25 of the old act and it is Section 8 under the new act. That means, under Companies Act 2013. And the central government is going to issue the certificate on based on certain criteria and it might tell you that what are the do's and dont's, because whenever you are getting this particular exemption you are also not use this particular entity for any commercial venture, because whatever the profit you are going to get out of that particular company it might be utilizes for development of arts social cause or for some other benefit. So, you need to decide that you are going to put this SPV for profit making or not profit making.

Thank you.