

Legal Compliance for Incorporating Startup
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Lecture – 11
Law Relating to One Person Company

I welcome you in my 11th Lecture regarding Legal Compliance for Incorporating Startup. I will start a new module and the name of the module is Incorporation of One Man Company, Private Limited Company and Public Limited Company. My focus in this particular lecture will be talking about the law relating to the different types of companies and how you can incorporate these companies. Now, please do remember all these types of companies are governed by a single enhancement that is known as Companies Act 2013. And these particular 2013 also provide how to incorporate, how to manage the company, and how to wind up the company.

So what I will do? I am going to take you through the different aspects of the law in the different stages relating to the company. Initially, I will talk with you One Man Company and what are the specific law relating to the one man company. Then I will talk with you regarding Private Limited Company and possibly I will talk with you what are the specific laws relating to the private limited company. Then I am going to talk with you a public limited company and possibly they are elaborated much more than One Man Company and private limited company. Because there is a many provisions which are similar for all the companies, but there is some provision which are of a difference.

So, the first I am going to talk with the difference and then I am going to deal with the similar provision. It will be easy for you at the end of the day to understand that whenever you are talking about particular type of company what are the law you should follow or what are the matter which will apply in these particular type of company. Ultimately I will talk about how you can incorporate these companies. So, it is a short of a similar procedural which you need to follow relating to the incorporation of the company. And I am going to deal all the incorporation of this company together, so it will be easy for you to understand the process.

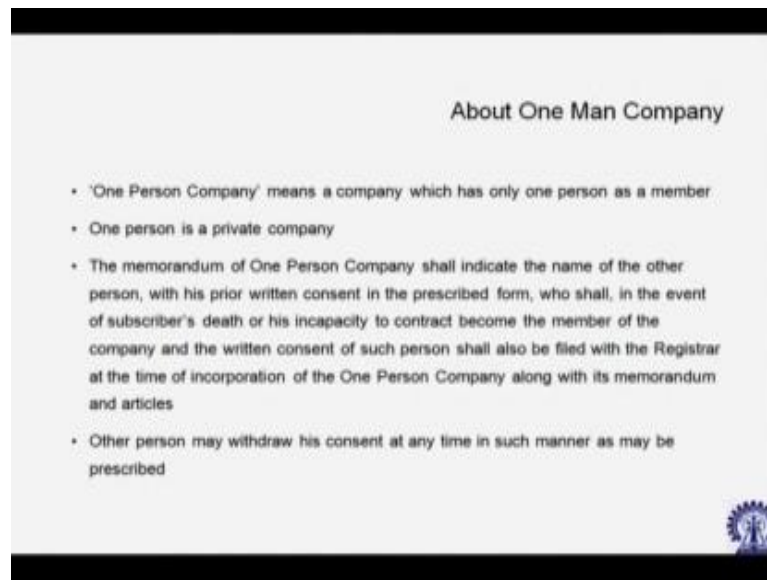
Now and I will concentrate on law relating to One Person Company. Now let me draw your attention in these particular point which possibly you can refer back my talks in the

introductory session and there I have talked about the one man company. And I have said that the One Man Company is of a very new origin which is the provision relating to the One Man Company is incorporated in Companies Act 2013 only. Now One Man Company is basically incorporation of a proprietor form. Now I told you in case of the proprietor form that there is a one person who brings a capital, who carry out the business and in the process of business if there is a new laws then he sustain that particular laws or he observed the laws.

Now in case of the One Man Company the last part is being taken care by the incorporation. That means, one person need to bring the capital which is required for the business he is going to manage the business, but if there is any laws then in that case he will not have personal liability. The liability will be only to that particular company which is being incorporated by this particular person. So, to put it in other way round in case of One Man Company they have put a limited liability to proprietorship. And that is a reason One Man Company is quite simple in structure and there is a very less compliance which has been prescribe under the Companies Act and these particular compliance even lesser than a private limited company. Even sometime this is lesser than even limited liability partnership.

So, if you are looking for a simplest form, and if you are looking for some quick incorporations, and if you want to look for some form which is going to give you a protection against the liability or the business risks or the business losses then it is suggested that you should incorporate your startup as a one man company. So, I am going to take you through now the characteristic of the One Man Company and little more detail about the attributes of the One Man Company and what are the compliance you need to follow in case of one man company.

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Now, I have put up definitions which has been provided in the statutory cell 'One Person Company' means a company which is only a one person as a member. Now when I am talking about the One Man Company I am basically indicating the One Person Company, because in the statutory it is named like that only One Person Company. Now herein when we are talking the person I have explained to you the meaning of the person in my previous lecture it can be a natural person or it can be artificial person. Artificial person are those which have been incorporated under the different statute, like I have talked with you earlier relating to LLP; Limited Liability Partnership. I have talked with you about co-operatives, I have talked with you societies, I have talked with you other companies, all these things all these are the person.

Now, One Person Company is also a private limited company. So, whatever the facilities the law provide to the Private Limited Company they are also provided to this particular One Person Company. And what about the compliance Private Limited Company requires to do the One Person Company also required to do all those compliance. But that is a lot exemption has been provided in the conducting of the business of One Person Company and that is what I am going to discuss with you.

Now in case of the One Person Company there is issue relating to the person who is incorporating that. If that particular person for any point of time became insolvent or incapacity to enter into contract or died then in that case there should be another person

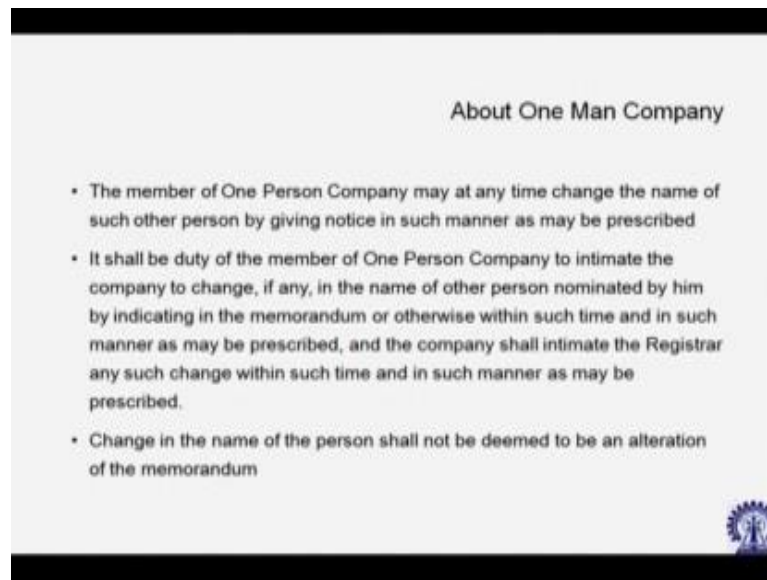
who can take over this particular company. So, the law suggest that another person name should be incorporated at the time of incorporating this particular company and to do that you need to take a proper concern from the person whose name you are incorporating as the other person in One Man Companies Memorandum.

Now, please remember whenever we are forming or incorporating any business or the startup as a company it has some kind of or characteristic which I was discussed with you yesterday relating to co-operatives. Like, they are the person in the eye of law and once they are person in the eye of law they have a perpetual succession that means even if that particular one member died still the company will continue in the eye of law. So, it has a perpetual succession, it can hold the property, in its own name, it can sue and can be sue; that means it can prosecute any other person if there is a violation of the right of this One Man Company which is provided by the statute or if there is any contractual bridge of the contract then this particular One Person Company can prosecute.

At the same time if other person you know other contract is not been implemented then other person can prosecute this one man company. That is a reason you need to provide the name for another person, so if one person who is incorporated the company and there is some (Refer Time: 10:00) have happened with that particular person other person can take charge of this one man company.

But please remember the other person may withdraw his concern at any point of time by giving a notice as may prescribe. Now you might find in the slide I have written many of the places as many prescribe because the law said so, and many of the cases you still not find this particular prescription form the ministry of (Refer Time: 10:33). So, ministry of (Refer Time: 10:35) generally provide rules or the regulation which has been frame under these particular law and accordingly you need to follow. That is a reason I have written that as many prescribe.

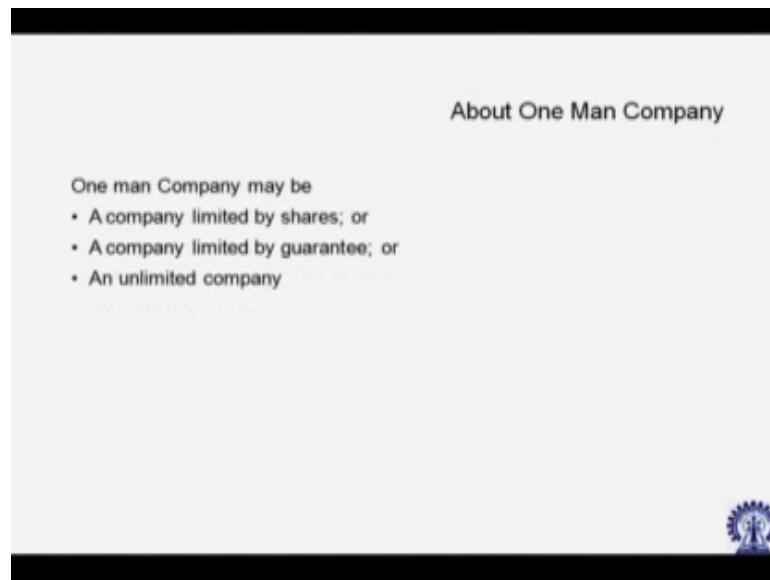
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Similarly, the other person name in a One Person Company may be change by giving a proper notice to that particular person. So, even the person who is a member only of a One Person Company he might give a notice to the other person and inform that he is going to change the name of other person in the memorandum of the company. Now it is duty of the One Person Company to initiate the change in the name of the other person nominated by him by indicating in the memorandum or otherwise. And this particular thing is needs to be informed to the register of the company so that the change can be incorporated into the memorandum of the company.

Similarly, the change in the name of the person shall not be deemed to be alteration of the memorandum, which actually happened in other crises whenever I will discuss about the memorandum of other companies then you will find if you are going to change any information in the memorandum then it basically treated as a change in the memorandum of the company. And change in the memorandum of the company is quite a difficult process that means you need to follow certain procedure to do that thing. And that particular prescription is generally provided in the statutory cell. So, you need to follow whatever the provision has been provided within the statutory.

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Now, One Man Company may be three types; it may be limited by shares, it may be limited by guarantee, and it may be even unlimited. Because, this is a pattern for all other type of company too, that means the company can be I mean a private company can be limited by shares, public company can be limited by shares. Public company can be limited by guarantee as well as the private company can be limited by the guarantee and public and private in both the cases they can be unlimited. So, the similar thing can also be applicable in case of One Person Company.

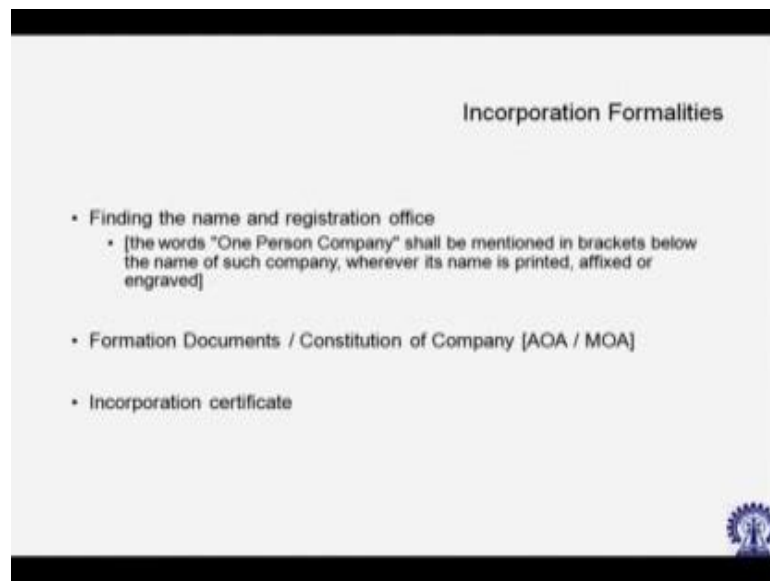
Now, let me explain to you what a meaning of limited by shares is. Limited by shares means whatever the contribution which you are making in the capital of the company that particular contribution will be divided into a number of shares, and in that particular shares we generally give a kind of value or financial value attach with that. Like you have brought a capital to the companies something like 10 lakh of Rupees and you have decided that each share value will be 10 Rupees. Then 10 lakh of Rupees is divided into 1 lakh of shares. So, you can decide that what should be the face value of these particular shares. Then your liability towards the outsider will be limited to 10 lakh of Rupees, so it will not be more than 10 lakhs even if you have lost more money than that of a 10 lakhs during the course of business.

Now, when you are talking about the guarantee it indicates that if the company is losing the money at the time of the business and this particular loss is more than the capital of

the company or whatever the asset the company have the member can extend some guarantee. That means, member might say that where I will take the guarantee up to 1 lakh of Rupees. So, whatever the liability company acquires and if it is not been satisfied by the capital of the company or assets of the company member can pay up to a lakh of Rupees.

Similarly, if it is unlimited liability then in that case members' liability is unlimited. That means, whatever the lose company sustain that particular lose first need to be paid from the asset of the company or the capital of the company and whatever will remain after that it will be paid by the member of that One Person Company. So, these particular concepts you should be clear while you are incorporating with startup and these particular thing you need to mention in the memorandum of association of the startup or of the company which you are incorporating.

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Now, let me take you to other formalities which I am going to explain further more when I am going to talk about private company and public company, but for your understanding let me put it. Now in case of the One Man Company you need to find out the name as well as the register office. Now finding a name is a process which I have discussed with you when I was talking with you LLP. So, there is a similarity of finding the process in case of the One Man Company.

What you need to do, you need to login to MCA website to find out that whatever name you are looking for are they available or there is already a business which dissipatedly similar with this particular name, then in that case you cannot take that name. So, you need to apply for a name of your One Man Company and there you need to give a more than one option. Similarly, you need to you need to find out that what should be the register office. Register office means their people will be going to communicate or if you are entering into any contract then in that case you need to mention the register office.

Now, if the company is printing anything then in that case, in addition to mentioning the name of the company and if it is a One Person Company you need to write that this particular company is a One Person Company within the bracket, so the companies identity that what is a type of this particular company can be identify from the name of that particular company itself.

Similarly, there is formation document which you need to quite or you can talk about the constitution of the company which are commonly known as AOA and MOA. MOA is going to provide a lot of information relating to the objective of the company; what is a authorise capital of the company, what is the register office of the company, what kind of liability with who is this particular company if incorporated like which I have discussed with you few minutes before that do you want to incorporate this company as a limited liability or company with a guarantee or company with a unlimited liability that you need to specify in the memorandum of association.

At the same time in the memorandum of association of One Man Company you need to specify that who will be the other person. That means, if there is a one person who is incorporating the company and in the eventualities like he is became insane or he is died, then in that case who will the person who will take care of this particular company or run this particular company. Similarly, in case of AOA you need to specify all in detail that what should be the face value of your shares, how much you can raise as borrowing capital, if you want to invest in the equity then what is the procedure you should follow, how you are going to manage this particular company, how you are going to call the company, what should be your Board of Director structure.


Now, in case of the One Man Company which I am going to talk with you little later there can be only one person in the Board of Directors where there is a no (Refer Time:

20:36) to have more than one person in the Board of Directors. So, if you want that in a Board of Directors they should be two persons or more than two persons then you need to specify that particular thing. You need to specify that what are the powers and function the board should enjoy and what are the power should be lying with share holders. Please remember in generally in case of the company you need to have annual general meeting, but those particular things are exempted in case of One Person Company, I am going to talk with you little latter.

So, ones you have this AOA and MOA drafted by yourself or by the help of the professionals because you need to tell you what are the kind of things you want in AOA and MOA to incorporate to the person who is providing your professional services, and what kind of a business you wanted to carry forward. Then you need to give some kind of other compliance document, like you need to give director identification number, who will be the director of this particular company and additional support if document which will be verified by the register at his satisfaction then he is going to issue the incorporation certificate.

Now, I have talked about the register. Register is basically a person appointed by the central government and register of a company will have office in all the state capital. Sometime you will find the register that will have a more than one office in the state itself or there might be more than one register office in a state itself. Like in the state of Maharashtra you might find there is a three officers are there of the register. It is depending on how many companies are incorporating in that particular state and even sometimes you will find that there is a couple of a state which has a only one register office. So, it is depending on a how many companies are registering in that particular state and they basically open these particular officers.

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Compliance

- In relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company
- One Person Company need not hold annual general meeting & all provision of Companies Act 2013 regarding general meeting will not apply
- Where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes-book required to be maintained and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act

Now, the next issue I wanted to talk with relating to the compliance issue. And in case of a One Person Company the annual return shall be sign by the company secretary or by the directors of the company. Now what is the annual return? Annual return is a statement which company need to file before the register of the company and which need to state above the transactions which company has made in the earlier years, what is the state of affair of the company which has to be put into the directors report. At the same time there is a other information like what is a (Refer Time: 23:38) structure, what is the governance structure that means what is the composition of the board if the board has community, then how many times they have made, what are the matter they have discussed so much so every information has to come into the annual report.

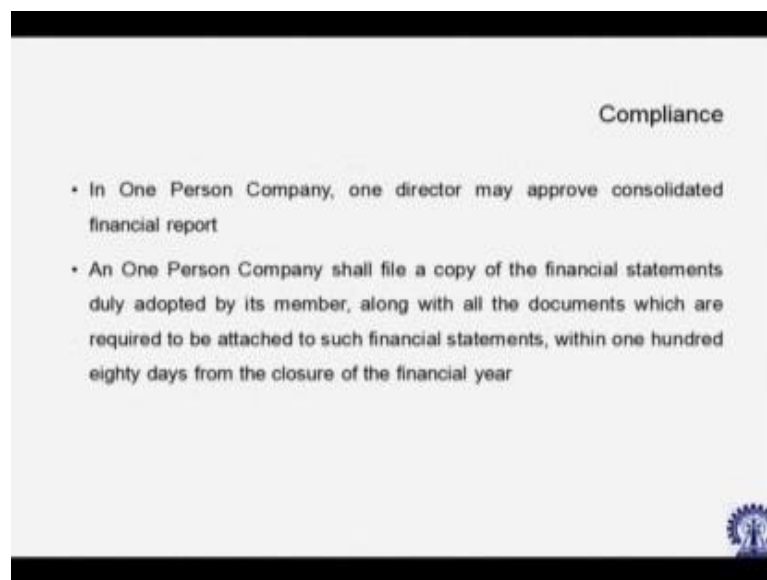
I am going to talk about the annual report little later when I will going to talk with you about the about the public limited company, because in case of the public limited company this annual report and structuring of the annual report and information which you pass in annual report is quite stringent in compare to One Person Company or private limited company.

Now, One Person Company need not hold annual general meeting and all the provisions of the Companies Act relating to annual general meeting will not apply in case of the One Person Company, because in case of the One Person Company there is an only one share holder. So, the objective of the annual general meeting is that all the share holders

will meet in that particular annual general meeting and whatever the important matter relating to the company finance, relating to the structure of the company, relating to restructuring like amalgamation, compromise, arrangement and all these things and these matters need to be discussed. So, in case of the One Person Company as it is there is only one person these particular things are not these particular annual general meeting is not required.

Now, where there is a one person in the Board of Director of One Person Company which is required to be transaction at the meeting it should be sufficient if the one person or one director enter the resolution in the minutes-book and he keep the minutes-book or meant in the minutes-book according to the provision of the Companies Act.

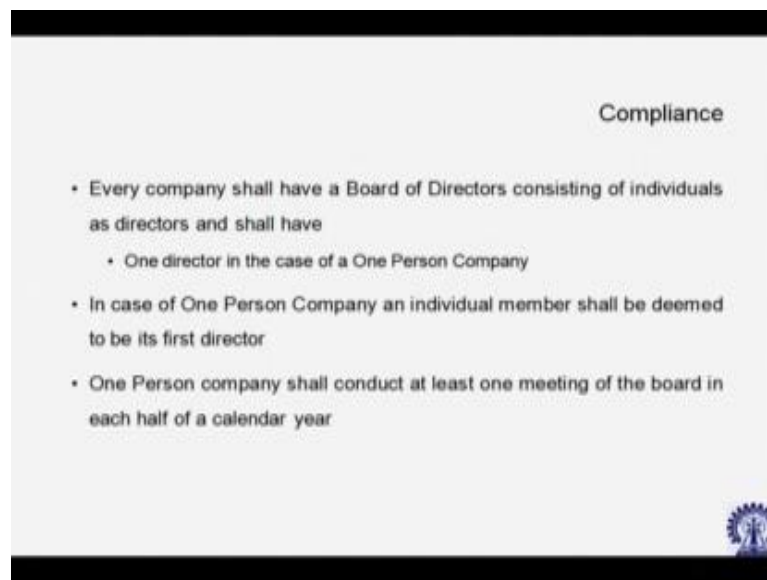
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So, even the director can hold the meeting by its own and then he can entered the particular minutes of the meeting into in the minutes-book itself. And this particular minutes-book you need to be kept in a structure manner because this may be inspected whenever people might find that there are some issues relating to the company. In case of One Person Company one director may approve the (Refer Time: 26:32) financial report, because under the law you need to submit the financial report passage of in every financial years. And you need to hand over within the 180 days from the closure of the financial years.

So, even though you do not require to have a very stringent compliance of the financial rules or submitting the unaudited report periodically, but you need to have submission of the audited report in the end of the financial report and in the end of the financial year and that has to be done after 180 days.

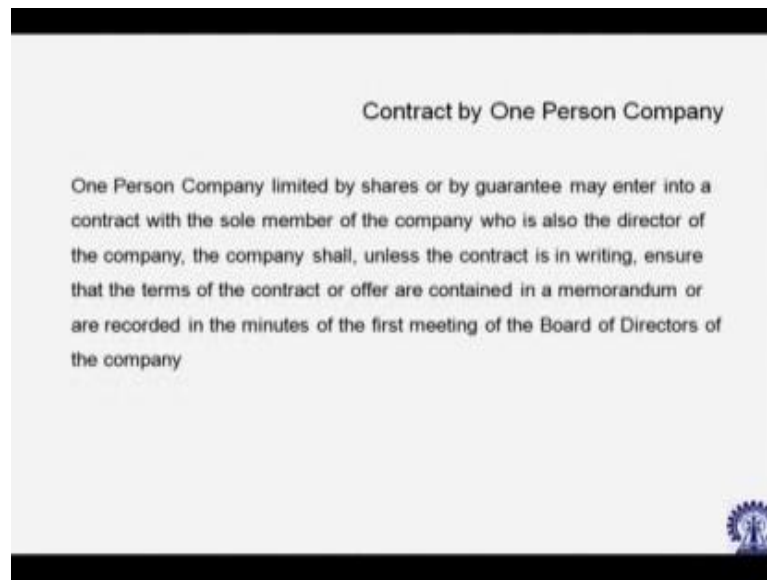
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Now, next important thing is in every company there should be a Board of Directors. As I have earlier mentioned that in case of One Person Company you can have only one Board of Director. But there is a possibility that you may have more than one person in the Board of Director of One Person Company. The next thing is that if the directors' name is not mentioned at the time of the incorporation of One Person Company, so whoever is the member of the One Person Company he will be the Board of Director by default.

And the next one is the board need to conduct the meeting in every half of a calendar year. That means, in every 6 month the board is need to conduct the meeting. If there is only one person as I have told that he can conduct the meeting by himself and then (Refer Time: 28:26) at the meeting.

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In case of One Person Company entering into a contract with its member, that means in a One Person Company the same person is a member of the board; that means director of the board he is only take the decision about the company and he want to enter into a contract with himself that is possible. That means, as an individual I can bring some capital and the property or I can give the loan to the company and the company which I am running can be the (Refer Time: 29:13) of mine.

So, if you are entering into a contract like that then that case you need to reduce that particular contract or terms of the contract in systematic writing and you have to put it in a systematic manner. So, that has been provided in act itself and what should be the process and what are the procedure you need to follow you can have a structured information or you can have the provisions in the memorandum or article of association or even the procedure can be lead out by Board of Directors.

So, One Man Company is quite interesting organization which is created by the Companies Act 2013, it is quite a simple to run, at the same time it is also quite formal, that means there is a kind of a formality which is been incorporated and because of that there is a possibility to track this particular health of this particular One Man Company.

Now, I will suggest you even if you have a very tiny capital to incorporate your startup as a One Man Company, because if you are incorporating your startup as a One Man Company then in that case it will be good facility for you to rise the bank as an SME or a

startup for this One Man Company, because the main objective in case of the One Man Company is to structure the business transaction and the financial process in that particular One Man Company.

So, the One Man Company as a startup is good business form and there is a every possibility that you can convert this particular One Man Company in other form of company in future.

Thank you.