



OPC

Comparison OPC – Pvt. Co. – LLP

Immediate Compliances

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Why this subject?

Challenges under Co Act 2013 For Private Companies



- ❑ Business Advance is deposit
- ❑ Raising of unsecured loans from shareholders
- ❑ Raising of Capital involves lot of processes
- ❑ Restrictions on related party transactions
- ❑ ROC Compliances / submissions
- ❑ CSR
- ❑ Penalties and Prosecutions
- ❑ Restrictions on number of directors
- ❑ Restrictions on number of audits an auditor can do



What are the Options for SME?

- LLP
- One Person Company
- Private Limited Company
- Partnership Firm

Theme - Multiple Options

LLP

PRIVATE
COMPANY



PARTNERSHIP
FIRM

- Before 2008 options were simple and clear
- Are we equipped?
- Do we need different approach?
- Do we need different Solutions?



THERE IS NO EASY SOLUTION.

Every Case needs customized solution.

Professionals advice NEEDED on this



**Selection of right entity would
be more 'valued service' than
'actual formation service'**

What can be the parameters?



- Vision [Perception?] of Promoters
- Ownership Patterns [FDI / Widely held / family owned / Investor – Entrepreneurship / Quasi Partnership]
- Nature of Business [Risk / Perpetual Succession / Manpower Dependence / Local - Global]
- Size of Business
- Tax efficiency
- Compliance Cost



2 Principles

Limited Liability
Perpetual Succession

Is Shareholders Liability Limited in Company / LLP

- ❑ Sundry Creditors Liability – Limited
- ❑ Contingent Business Liabilities - Limited
- ❑ Warranties – Limited
- ❑ Taxes – Shareholders NIL. Can be Unlimited for Directors
- ❑ Statutory Liabilities – Shareholders NIL. However, Directors Liability may be unlimited
- ❑ Secured Lenders / Banks – Unlimited ??
- ❑ In case of Partnership Firm – All above categories – Unlimited Liability

Perpetual Succession

	Company	Partnership	LLP
Perpetual Succession	Possible	Not Possible	Possible

Perpetual Succession becomes reality because of any one or more following -

1. Good Brand
2. Commitment to Vision Mission and Values
3. Property – [Immovable / Shares / Intellectual Property]
4. Good Team [Management other than Shareholder Directors]
5. Capacity of Business to compensate employees, owners and company
6. Right time change in shareholding and Directorships of the Company
7. Policy Based Functioning

If Owners are advised for such bold steps he can create wealth for generations by transmitting shares of the Company



**How to approach this subject
... [choosing entity]?**

Basic Distinction



- OPC is meant for single owner to have
 1. Perpetual succession; and
 2. Limited Liability
- LLP and Private Limited company is for multiple owner with limited liability



One Person Company Definition

Definition



- Section 2(62)
 - ▣ One Person Company means a company which has only one person as a member
- It is a Private Company



Incorporation

Incorporation of OPC



- Name of One member who is an individual (Natural Person)
- Citizen and Resident of India
 - Who has stayed in India for a period of not less than 182 days during immediately preceding one calendar year
- Nominee shall also meet above criteria
- A Member can become member or nominee only of one OPC



What is not possible in OPC

What is not possible in OPC



- ❑ Member of OPC becoming member by nomination in another OPC- he has to select only One OPC within 180 days
- ❑ Minor cannot become member or nominee or can hold beneficial interest in OPC
- ❑ Section 8 Cannot be formed as OPC or converted into OPC
- ❑ OPC cannot carry out NBFC activities or investment in securities of any body corporate

Cont...



- Voluntary conversion into any other kind of company is not possible for 2 years (except meeting threshold of paid up capital beyond 50 lacs or average annual turnover during relevant period exceeds 2 crore)



Exemptions

Exemptions



- ❑ AGM is not required to be held
- ❑ Section 98 , 100 to 111 are not applicable
- ❑ Cash Flow is not applicable
- ❑ File Financials within 180 days form the FY end
- ❑ Only One Director
- ❑ Only One BM in half year (gap between two meetings should be minimum 90days)



Who can form OPC?

Who can opt for OPC?



- ❑ SINGLE OWNER who needs perpetual succession
- ❑ For giving perpetual succession to some property
- ❑ For giving perpetual succession to IPR of some authors or scientists or some trade marks
- ❑ For Limited Liability against risky businesses
- ❑ Small Businesses who have potential to grow BIG
[Start with OPC and then convert to Private /Public Company]



Multiple Owners
COMPARISON AMONGST
OPTIONS

Comparison with existing Options

Particulars	Partnership	Limited Liability Partnership	Company
Legal Entity	No separate entity	Separate entity	Separate Legal Entity
Perpetual Succession	Not applicable	Applicable	Applicable
Liability	Unlimited	Limited	Limited

Comparison with existing Options

Particulars	Partnership	Limited Liability Partnership	Company
Compliance level	Low	Moderate	High
Taxation	Lower	Lower	Higher
Dividend Distribution Tax	Not applicable	Not Applicable	Applicable

Comparison with existing Options

Particulars	Partnership	Limited Liability Partnership	Company
FDI/ ODI/ ECB	Eligible	FDI – FIPB approval	Eligible
NBFC	Not eligible	Not eligible	Eligible
From Bankers point of view	Un favorable	Un favorable	Favorable
Information at Public Domain	NIL	Lower	Higher

Comparison with existing Options

Particulars	Partnership	Limited Liability Partnership	Company
Dispute Resolution System	Not available	Not available	Available
Related Party Transactions	No restriction	No restrictions	Lot of restrictions
Restrictions on cash flow	No restriction	No restriction	Stringent
Making investment in shares	Not possible	Possible	Possible



**Why do we need LLP as a
separate form of
Organization ?**

Need – For Professionals / Service Industry



- There is a need for Multi Disciplinary Professionals Firm
- There is restriction on number of partners u/s. 11
- BIG Hurdle is the liability of all partners is unlimited [Unlimited liability of Auditors]
- Restrictions under Companies Act 2013!!!

Need for SME



- SME can not cope up with corporate financial rigidity [i.e. **Dividend, capital and related party transaction**]
- SME can not cope up with compliance requirements in Company
- SME sector generally do not raise money from public



WHO should form LLP?
WHO should form
Company ?

Who can prefer what?

Parameters	Choice
High Leveraging	Company
High Capital Requirement	Company
High Risk like – Hotels / Hospitals / Education / Transport / Infrastructure	Company
Confidentiality	Partnership
Flexibility in operations	Partnership / LLP
Employee Retention	Company
Perpetual Succession	Company / LLP
Shareholder Dispute	Company
Foreign Investment	Company

Can I set some simple parameters



- If capital is **below** benchmark – Partnership
- If there is **No** requirement of heavy borrowing – Partnership
- If risk can be absorbed in profits and compliance cost is challenge – Partnership
- If confidentiality is more important than risk and perpetual succession – Partnership
- If tax efficient cash flow is more than widely held entities – LLP / Partnership

Who can prefer LLP?



- Asset Holding Companies
- Best for Joint Venture entities
- All partnerships /AOP with long term objective
- Any company not having bank loans
- Professional Firms [CA/CS/CWA]
- Service sector/ Real Estate

Who can not go for LLP?

- Non profit making entities [NGO]
- Finance/ Investment entities [Till RBI recognizes LLP]
- Entity inviting FDI [Only 100% automatic FDI sectors are allowed with FIPB approval]

Who can go for OPC?



- Where ownership can not be shared for the 'time being'; but
- Needs perpetual succession and limited liability

Why and who should form Private Company?

- Indian Promoters / Business who are capital hungry
- Where business requires heavy leveraging
- Promoter wants to diversify ownership but wants to retain basic control and 'going concern'
- Who want offer perpetual succession to their 'business' ...
- If business needs FDI and business is such that it is not allowed in LLP

Who can go for partnership/ Proprietary concern

- Very small business
- Single location Retailers
- Micro Scale manufacturers
- Cottage industry
- Single location small restaurants

- But if they have dream to migrate to large formats, they should form company [OPC or otherwise]



Immediate Compliances for Private Limited Company

Immediate Compliances



- ❑ Issue of Capital – strict compliances – either rights issue of private placement
- ❑ Filing of DPT 4 [if not filed]
- ❑ Non acceptance of deposit from 1 April 2014 unless complied with Acceptance of Deposit Rules
- ❑ Business advance more than 365 days becomes deposit
- ❑ Not to give loan to Director / Group Entity
- ❑ Charging interest on all the loans given [even to employees]

Immediate Compliances



- ❑ Owning assets in the Company's name
- ❑ Filing of forms for investment / loan / borrowing / one level below Working Director etc with ROC
- ❑ Approving salary to Directors
- ❑ Maintaining Registers in new format
- ❑ Updating Register of Member since incorporation
- ❑ CSR spending
- ❑ Appointment of Auditors for 5 years
- ❑ Printing of CIN, e-mail, website, telephone and fax on all 'official publications'

