

CORPORATIZATION OF MSME

More than 90% of MSMEs are proprietorship or partnership enterprise. Therefore, it is imperative to strive towards corporatisation of Small & Medium Enterprises for good corporate governance as well as energise the economy as a whole.

MSME may be incorporated as:

- One Person Company
- Limited Liability Partnership
- Private Company
- Public Company



One Person Company

“One Person Company” means a company which has only one person as a member.

- An OPC is incorporated as a private limited company, where there is only one member and prohibition in regard to invitation to the public for subscription of the securities of the company.
- The Salient features of an OPC include the following:
 - ✓ An OPC can be formed under Company limited by guarantee or shares.
 - ✓ An OPC limited by shares shall have minimum paid up capital of Rs. 1 lakh.
 - ✓ An OPC are restricted from the right to transfer its share and Prohibits any invitations to public to subscribe for the securities
- An OPC is required to give a legal identity by specifying a name under which the activities of the business could be carried on. The words 'One Person Company' should be mentioned below the name of the company, wherever the name is affixed, used or engraved.

PROCESS OF INCORPORATION OF ONE PERSON COMPANY (OPC)

- Obtain Digital Signature Certificate [DSC] for the proposed Director(s)
- Obtain Director Identification Number [DIN] for the proposed director(s).
- Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name.
- Draft MOA & AOA
- Sign and file various documents including MOA & AOA with the Registrar of Companies electronically.
- Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.
- Scrutiny of documents at Registrar of Companies [ROC].
- Receipt of Certificate of Registration/Incorporation from ROC.

Exemptions available to one person company

- ✓ Signatures on Annual Returns – Section 92 of the Companies Act, 2013
- ✓ Holding Annual General Meetings – Section 122 of the Companies Act, 2013
- ✓ Board Meetings and Directors – Section 149, 152 & 173 of the Act
- ✓ Signatures on Financial Statements - Section 134 and 137 of the Companies Act.
- ✓ Contracts by One Person Company – Section 193 of the Companies Act.

The new Companies Act, 2013 gives special attention to the contracts which will be entered by One Person Company.

SOLE PROPRIETORSHIP

- A sole proprietorship is a business owned by only one person. It's the easiest and cheapest type of business to form. It is also known as "sole ownership", "individual partnership" and "single proprietorship".
- Its formation does not require any complicated legal provision like registration etc.

DIFFERENCE BETWEEN OPC AND SOLE PROPRIETORSHIP

ONE PERSON COMPANY	SOLE PROPRIETORSHIP
Separate Legal entity	Not a Separate Legal Entity
Limited Liability	Unlimited liability
Perpetual succession	No perpetual succession

Loan -not the sole responsibility of the owner	Loan-sole responsibility of the owner
Registration required	Registration not required
Finance –credit record of the OPC	Finance –credit record of the Owner

LIMITED LIABILITY PARTNERSHIP

- A limited liability partnership can at best be described as a hybrid between a company and partnership that provides the benefit of limited liability but allows its members the flexibility of organising their internal structure as a partnership based on a mutually arrived agreement.
- **Key Characteristics of LLP:**
 - ✓ Separate Legal Entity
 - ✓ Limited liability
 - ✓ Right to manage business
 - ✓ Perpetual succession
 - ✓ Profit motive
 - ✓ Tax benefit
 - ✓ No requirement for Minimum Capital Contribution
 - ✓ Partner can enter into transactions and give loan to the LLP

PROCEDURE FOR REGISTERING LLP

Deciding the Partners and Designated Partners

To obtain Director Identification Number (DIN) & Digital Signature Certificate

To Apply for Name of LLP (LLP-1)

After Name Approval file form 2 and Form 18 to the ROC

After that File LLP agreement (i.e. Form-3) and Partners' details (i.e. Form-4)

DIFFERENCE BETWEEN LIMITED LIABILITY PARTNERSHIP AND PARTNERSHIP FIRM

LIMITED LIABILITY PARTNERSHIP	PARTNERSHIP FIRM
Compulsory Registration	Optional Registration
It is created by law	It is created by Contracts
It is separate legal entity, separate from its partners\ designated partners.	It is not separate legal entity from partners. Partners are collectively referred as firm
It has perpetual succession	It does not have perpetual succession.
Common Seal	Not required
Liability of partners is limited	Liability of partners is unlimited



PRIVATE COMPANY Vs. PUBLIC COMPANY

“Private Company”

A company which is by its articles,—

- (i) restricts the right to transfer its shares;
- (ii) limits the number of its members to two hundred
- (iii) prohibits any invitation to the public to subscribe for any securities of the company;
 - However, where two or more persons hold one or more shares in a company jointly, they shall be treated as a single member.

“Public Company”

A company :-

- ✓ which is not a private company;
- ✓ private company which is Subsidiary of a Public Company

DIFFERENCE BETWEEN PUBLIC AND PRIVATE COMPANY AS PER COMPANIES ACT, 2013

Private Limited Company	Public Limited Company
<p>Minimum Capital- NIL</p> <p>Right to transfer the shares: Restricted</p>	<p>Minimum Capital- NIL</p> <p>Right to transfer of shares are allowed</p>
<p>Minimum members 2 (Two),</p> <p>Maximum members 200 (Two Hundred)</p>	<p>Minimum members 7 (Seven),</p> <p>Maximum members No Limits</p>
<p>Public offer is not applicable and no requirement of dematerialization of securities</p>	<p>In case of public offer of securities, the securities have to be in Dematerialized Form</p>
<p>Listing of securities on Stock exchange</p> <p>Not Applicable</p>	<p>Securities offered in Public Offer, to be listed in Recognized Stock Exchanges</p>

<p>Quorum of Meetings</p> <p>Two members personally present</p>	<p>Quorum of Meetings</p> <p>Five in case of Members up to 1000;</p> <p>Fifteen in case of Members more than 1000 up to 5000;</p> <p>Thirty in case of Members exceed 5000.</p>
<p>No restriction on amount of managerial remuneration</p>	<p>Managerial Remuneration is restricted to 11% of Net profit (subject to conditions); OR at least Rs. 30 lakh p.a. depending upon paid up capital</p>
<p>Retire by rotation</p> <p>Not Applicable</p>	<p>At least two-third of total number of directors be liable to retire by rotation and eligible of being re-appointed in AGM</p>



Procedure for incorporation of Companies

INC-29 will make it possible to incorporate all details concerning reservation of name, allotment of Director Identification Number (DIN) up to three directors, incorporation of company, appointment of directors, commencement of business, application of PAN, TAN, ESIC through a single form.

This form can be used to form one person company, private company, public company and producer company but not for section 8 company which is not for profit company.