Gravitas Legal

Demystifying the difference between One Person Company, Limited Liability Partnership and Private Limited Company

Authored by Priyanka Bharti, Partner and Anubhav Chakravorty, Associate

India is an emerging market with expansive scope and opportunities for Indian and foreign investors alike. As a result, many companies continue to target expansion by establishing their businesses in India. Investors can decide the legal structure within which their businesses will operate, based on the purpose, objective, initial investment, risk appetite and duration (short term/long term) of the business. The commercial law in India lays down several mechanisms for the establishment and functioning of different types of commercial entities; each having distinguishable attributes, prerequisites for incorporation, and conversion mechanisms. Through this article, we aim to demystify three types of companies in India (One Person Company, Limited Liability Partnership and Private Limited Company) and share a comprehensive understanding of their differences.

	One Person Company	**Limited Liability Partnership**	**Private Limited Company**
Salient Features	▪ Low compliance burden, owing to the numerous exceptions culled out, despite being within the scope of what is defined as a "Private Limited Company" under S. 2(68) of the Companies Act, 2013[i]. ▪ One Person Company (OPC) tends to bring the unorganized sector of proprietorship into the organized version of a private limited company. Proprietors, by default, have unlimited liability. However, if such a proprietor does business through an OPC, then the liability of the members is limited. ▪ OPC gives entrepreneurs the advantage of limited liability whereby their liability as members is limited to their unpaid subscription money. ▪ On the demise/disability of the original director, a nominee director is appointed who is required to manage	▪ No minimum capital requirement. The contribution of a partner can consist of tangible, movable or immovable or intangible property or other benefit to the Limited Liability Partnership (LLP). ▪ An LLP requires a minimum of two partners while there is no limit on the maximum number of partners (S. 6, Limited Liability Partnership Act, 2008[ii]). ▪ Lower cost for registration. ▪ The LLP, being a separate legal entity, has the right to own, enjoy and transfer property in its own name. ▪ The accounts are audited in accordance with the LLP Rules, 2009 unless the turnover does not exceed Rs. 40,00,000, in any financial year; or the contribution does not exceed Rs. 25,00,000 (Rule 24, LLP Rules, 2009).	▪ Most prevalent and popular type of corporate legal entity in India. ▪ A Private Limited Company has 'perpetual succession', i.e. continued or uninterrupted existence until it is legally dissolved. Being a separate legal person, it is unaffected by the death or other departure of any member but continues to be in existence irrespective of the changes in membership. ▪ The liability of the members is limited only to the extent of the face value of shares taken up by them (S. 2(22), CA, 2013). ▪ Shares are transferable by a shareholder to any other person. The transfer is easier in comparison to the transfer of interest in business run as a proprietary concern or a partnership.

	the affairs of the company till the date of transmission of shares to legal heirs of the demised member (S. 4(1)(f), CA, 2013). ▪ OPC's can appoint as many as 15 directors for administrative functions, without giving any share to them. ▪ There is no requirement to hold Annual or Extra Ordinary General Meetings. Only a resolution is required to be communicated by the member of the company, and entered into the minutes' book with the date and signature. Such date is deemed to be the date of meeting (S. 96 (1), CA, 2013). ▪ Provisions of S. 174 (Quorum for meetings of Board) don't apply to a One Person Company in which there is only one director on its Board of Directors. ▪ Where the OPC has only one director, all the businesses to be at the transacted meeting of the Board is required to be entered into the minutes' book maintained under S. 118 (S. 122(3), 122(4), CA, 2013). In this case, there is no additional requirement to hold Board Meetings (S. 96(1)), CA, 2013). ▪ The cost for registration of an OPC is lower and there are fewer filings with the Registrar of Companies (ROC). ▪ The mandatory rotation of auditor after expiry of the maximum term is	▪ LLP is liable for payment of income tax but the share of its partners in LLP is not liable to tax. Thus, no dividend distribution tax is payable. Provision of 'deemed dividend' under income tax law is not applicable to LLP (S. 40(b), CA, 2013).	▪ A company being a juristic person, can acquire, own, enjoy and alienate property in its own name. ▪ Being an independent legal entity, it can sue and also be sued in its own name. ▪ It can make a valid and effective contract with any of its members. It is also possible for a person to be in control of the company and at the same time be in its employment. Thus, a person can at the same time be a shareholder, creditor, director and also an employee of the Private Limited Company. ▪ It can issue debentures (secured as well as unsecured) and can also accept deposits from the public, etc.

	not applicable. ▪ Provisions of S. 98 and S. 100-111, relating to holding of general meetings do not apply to a One Person Company (S. 122 (1), CA, 2013). ▪ OPC is an artificial entity distinct from its owner. Thus, the claims made against the business cannot be pressed against the owner and there is perpetual succession.		
Requirements	▪ At least one shareholder; ▪ At least one director; ▪ The director and shareholder can be the same person; ▪ At least one nominee director (cannot be a minor); ▪ Only a natural person who is an Indian Citizen and resident in India may form an OPC; ▪ Share Capital of at least Rs. 1,00,000; ▪ 'OPC' to be suffixed with the name of OPCs to distinguish it from the other companies (S. 12(3), CA, 2013); ▪ At least one meeting of the Board of Directors in each half of a calendar year where the gap between the two meetings shall not be less than 90 days (unless there's only one director) (S. 173(5), CA, 2013); and ▪ Filing of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the	▪ At least two partners (not cooperative societies, minors) with at least one partner being an Indian resident (S. 6, LLP Act, 2008). ▪ The fee for registration of LLP including conversion of a firm or a private company or an unlisted public company into LLP: → LLP whose contribution is limited to Rs 1,00,000: fee of Rs. 500. → LLP whose contribution exceeds Rs 1,00,000 but is limited to Rs 5,00,000: fee of Rs. 2,000. → LLP whose contribution exceeds Rs 5,00,000 but is limited to Rs 10,00,000: fee of Rs. 4,000. → LLP whose contribution exceeds Rs 10,00,000: fee of Rs. 5,000. (5, Annexure A, LLP Rules, 2009) ▪ Name should not include something prohibited under the Emblems and Names Act, 1950 (Rule 18, LLP Rules, 2009). ▪ Should not belong to the excluded list	▪ A minimum of two directors, and maximum of 15 (One needs to be Indian Resident and Indian national) (S. 3(1)(b), 149(1)(b), CA, 2013). ▪ Two persons are also required to act as shareholders of a company. The shareholders can be natural persons or an artificial legal entity (Maximum 200) (S. 2(68)(ii), CA, 2013). ▪ Minimum capital contribution required for a private limited company is Rs. 1,00,000. ▪ An address in India where the registered office of the Company will be situated is required. The premises can be a commercial/industrial/residential where communication from the MCA will be received.

	closure of the financial year (S. 137, CA, 2013).	of names (Rule 18, LLP Rules, 2009). ▪ Minute book to be maintained to record minutes of meetings of partners. However, the LLP Act does not prescribe compulsory meetings of partners. Partners may be called for events prescribed in the LLP Agreement. ▪ Statement of account and solvency is required to be filed annually. ▪ If the LLP has a turnover of less than Rs. 40,00,000 and a capital contribution of less than Rs. 25,00,000; there are no audit requirements. ▪ FDI in LLP requires prior RBI approval. (Annex I to A. P. (DIR Series) Circular No. 123 dated April 16, 2014)	
Conversions	**To LLP:** Cannot be done as at least two members are required to be partners in LLP (Section 6, LLP Act, 2008).	**To OPC**: Cannot be done as LLP requires at least two members.	**To OPC**: ▪ A Board Meeting must be conducted to get in-principal approval of the Directors and fix date, time and place for conducting EGM to obtain the approval of the shareholders of the private limited company by means of a special resolution. ▪ Hence, at the Board Meeting, a support notice of EGM along with Agenda and Explanatory Statement should be annexed to the notice of General Meeting according to the

			Companies Act, 2013. Further, a Director or Company Secretary should issue Notice of the Extra-ordinary General meeting (EGM) as permitted by the Board. The Notice of the Extra-ordinary General Meeting (EGM) should be issued to all Members, Directors and the Auditors of the company. ▪ Form MGT-14 to be filed within a period of 30 days of passing of special resolution with the relevant ROC, with approved fees and along with subsequent attachments (Rule 7, LLP Rules, 2009).
	To Pvt. Ltd. Co.: An OPC may convert to a Pvt. Ltd. Co. in two ways: **1. Voluntary Conversion:** If the paid up share capital is more than Rs. 50,00,000 or if the average turnover is more than Rs. 2,00,00,000, the conversion is permitted within two months; else an OPC may only convert upon the completion of two years from its date of incorporation. The procedure is as follows: ▪ Issue notice in accordance with S. 173(3), CA, 2013 for convening a meeting of the Board of Directors to pass resolutions to increase the number of Directors (minimum of	**To Pvt. Ltd. Co.:** Prior to the incorporation process of the Pvt. Ltd. Co., the LLP must fulfil the following: ▪ Must have at least seven partners; ▪ Must obtain approval of all the partners; ▪ Advertisement to be done in a local and national newspaper; and ▪ No Objection Certificate (NOC) to be obtained from the ROC where the LLP is registered. The incorporation process includes: ▪ Having the name approved by the ROC by submitting an application in e-format. Items mentioned in INC-1 to be	**To LLP**: A Private Limited Company can be converted into an LLP as per S. 56 and Schedule III of the act under the following circumstances: ▪ There is no security interest in its assets subsisting or in force at the time of application; and ▪ The partners of the limited liability partnership to which it converts comprise all the shareholders of the company and no one else. (S. 2, Schedule III, LLP Act, 2008) ▪ An application has to be filed with the Registrar which includes a statement by all its shareholders in such form and manner to be accompanied by fees containing particulars, along with

	two directors) and increase in shareholders of company (minimum of two shareholders). A resolution would also need to be passed to get shareholders' approval for the alteration of the AOA and MOA; ▪ A signed and dated resolution is communicated by the member of the company and entered into the minutes' books (S. 122(1), CA, 2013); and ▪ Form INC-6 is filed within 30 days of passing of special resolution with necessary attachments (S. 18, CA, 2013). **2. Mandatory Conversion:** The mandatory conversion of an OPC to private (or public) company takes place when its paid up share capital exceeds Rs. 50,00,000; or when its average annual turnover during the relevant period exceeds Rs. 2,00,00,000. This conversion is mandatory within a period of six months. After the meetings are conducted and the necessary entry is made into the minutes' books in the manner similar to what is prescribed for voluntary conversion, Form INC-5 is required to be filed within 60 days from the date that the criteria for mandatory conversion begin to apply (Rule 6,	chosen. (An accepted name would be valid for 60 days) ▪ Application must be filed on the MCA portal for all future directors of the company to obtain a Digital Signature Certificate (DSC) and a Director Identification Number (DIN). ▪ Upon having the name approved by the ROC, form URC-1 ought to be filed with accompanying documents within 20 days. ▪ Upon sanction of form URC-1, Memorandum of Association (MoA) and Articles of Association (AoA) to be formulated and filed with the ROC. (S. 366, CA, 2013 & Company (Authorized to Register) Rules, 2014).	incorporation document and statement referred to in S. 11 (S. 3, Schedule III, LLP Act, 2008). ▪ Within 15 days of the date of registration, LLP must inform the ROC about the conversion and of the particulars of the limited liability partnership (S. 4, Schedule III, LLP Act, 2008).f

	Companies (Incorporation) Rules, 2014).		

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[i] Hereinafter CA, 2013.
[ii] Hereinafter LLP Act, 2008.

New Delhi
C-91, 2nd Floor,
Panchsheel Enclave,
New Delhi – 110017
Phone: (+91) (11) 45671111
Email: gldelhi@gravitaslegal.co.in

Mumbai
102, Vikas Building,
1st Floor, Bank Street Fort,
Mumbai – 400001
Phone: (+91) (22) 49725818
Email: glmumbai@gravitaslegal.co.in