# STRUCTURING A BUSINESS VENTURE – COMPANY OR LIMITED LIABILITY PARTNERSHIP

Many start-up entrepreneurs wishing to begin an enterprise are usually confused about aspects of structuring a new venture. Many questions linger in their minds, viz, whether to incorporate a company, register a limited liability partnership ("**LLP**") or go the tried and tested way of a traditional partnership or proprietorship.

Let's discuss some pros and cons of the above forms of business structures and when exactly would each of the above be appropriate to incorporate.

**Company as a form of corporate structure**

The first thing one should know about companies is that they are legal entities. Although they do not 'exist' in the same corporeal sense that people exist, they have the same power as real people. They can own property, sue and be sued, carry on business, pay taxes and, generally, do all the legal things that flesh and blood people can do. That is why, for example, if you treat the company's money like your own and pocket it directly instead of depositing it in the company account you are stealing the money from that company, even if you own all the shares of that company.

The next thing one must know is that all companies are essentially the same, regardless of size. The vast majority of companies all have certain basic features in common. They are owned by the shareholders, controlled by directors and managed by executives. This is true whether the company is a two-man operation with very few assets or a billion dollar company. The board of directors, depending upon the articles of association of the company, is where the real power lies for most companies while executives carry out the wishes, policies and orders of the board. Shareholders, of course, are owners of the company who reap benefits, through dividends or increase in share value.

Another 'basic', a start-up entrepreneur needs to know is the difference between public and private companies. Public companies are companies whose shares are publicly traded, usually on a recognized stock exchange (though not necessarily), while private companies are closely held whose shares cannot be freely transferred.

**Limited Liability Partnership ("LLP") as a form of corporate structure**

In India, LLP is a fairly new form of corporate structure that combines the flexibility o f a partnership and advantages of limited liability of a company. In other words, it is an alternative corporate structure that provides the benefits of limited liability of partners, but allows its partners the flexibility of organising their internal management on the basis of a mutually arrived agreement, as is the case in a partnership firm. Owing to flexibility in its structure and operation, it would be useful for small and medium enterprises, in general, and for enterprises in the services sector, in particular to have this as a preferred form of corporate structure. Internationally, LLPs are the preferred vehicle of business, particularly for service industry or for activities involving professionals. Though the concept of LLP has been recently introduced in India but it is very known concept in other countries of the world especially in service sector. Key advantages of an LLP are its low cost of formation, easy to manage, lower compliance costs, no requirement of any minimum capital contribution, no restrictions as to maximum number of partners, no exposure to personal assets of partners and limited audit requirement. The main disadvantage; however of an LLP is that as of now, an LLP cannot raise money from the public.

**Better form of corporate structure – Company or LLP**

As a business venture, first of all one must remember that in the complex world of corporate structures, there is no one solution or answer to a given situation. Everything depends upon the kind of business one is in, number of shareholders / partners there are on board the enterprise, how the rights and liabilities are structured between partners / shareholders and the number of employees there are on the roll of an organization. For example, if one is in the real estate business with a few investors on board, than an LLP is a great corporate vehicle to incorporate, as it limits the liability of its partner. In other words, a real estate enterprise can have a different projects owned by separate LLP's. On the other hand, if one has a manufacturing concern, owning a few factories, then a company may be better, as it helps even in going public in future.

In the age of private equity and venture capital investments, one thing that remains common for all start-ups is that in order to attract external capital or avoid internal disputes a new business venture should always be well-structured.

Raghav Seth.

**About the author:**

The author is a corporate lawyer empaneled with Evaluer. Views expressed are personal.