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Factors needed to be considered while selecting forms of ownership for a startup

1. Factors to consider in choosing the type of business entity to operate include:
2. Nature of business activity
3. Scale of operations
4. Capital requirements
5. Degree of control and management
6. Degree of risk and liability
7. Stability of business
8. Flexibility of administration
9. Division of profit
10. Costs, procedure, and government regulation
11. The number of owners and stakeholders in the business
12. Whether your organization will be operating in a for-profit capacity or as a non-profit organization
13. The complexity of initial and annual paperwork requirements
14. The desired tax structure
15. A future intention to take your business public or to sell your business

1. Nature of business activity

This is an important factor having a direct bearing on the choice of a form of ownership. In small trading businesses, professions, and personal service trades, sole-proprietorship is predominant. Examples are Laundromats, beauty parlours, repair shops, consulting agencies, small retail stores, medicine, dentist accounting concerns, boarding-house, restaurants, speciality shops, jobbing builders, painters, decorators, bakers, confectioners, tailoring shops, small scale shoe repairers and manufactures, etc. The partnership is suitable in all those cases where sole proprietorship is suitable, provided the business is to be carried on a slightly bigger scale.

Besides, partnership is also advantageous in case of manufacturing activities on a modest scale. The finance, insurance, and real estate industries seem to be suited to partnership form of organisation. Some of the financial businesses that find this form advantageous are tax, accounting, and stock brokerage firms, and consulting agencies.

Service enterprises like hotels and lodging places; trading enterprises, such as wholesale trade, large scale retail houses; manufacturing enterprises, such as small drug manufacturers, etc. can be undertaken in the form of partnership. Manufacturing contains the highest percentage of companies among all industries. Similarly large chain stores, multiple shops, super-bazaars, engineering companies are in the form of companies.

2. Scale of operations:

The second factor that affects the form of ownership organisation is the scale of operations. If the scale of operations of business activities is small, sole proprietorship is suitable; if this scale of operations is modest — neither too small nor too large — partnership is preferable; whereas, in case of large scale of operations, the company form is advantageous.

The scale of business operations depends upon the size of the market area served, which, in turn, depends upon the size of demand for goods and services. If the market area is small, local, sole-proprietorship or partnership is opted. If the demand originates from a large area, partnership or company may be adopted.

3. Capital requirements:

Capital is one of the most crucial factors affecting the choice of a particular form of ownership organisation. Requirement of capital is closely related to the type of business and scale of operations. Enterprises requiring heavy investment (like iron and steel plants, medicinal plants, etc.) should be organised as joint stock companies.

Enterprises requiring small investment (like retail business stores, personal service enterprises, etc.) can be best organised as sole proprietorships. Apart from the initial capital required to start a business, the future capital requirements—to meet modernisation, expansion, and diversification plans —also affect the choice of form of ownership organisation.

In sole proprietorship, the owner may raise additional capital by borrowing, by purchasing on credit, and by investing additional amounts himself. Banks and suppliers, however, will look closely at the proprietor's individual financial resources before sanctioning loans or advances.

Partnerships can often raise funds with greater ease, since the resources and credit of all partners are combined in a single enterprise. Companies are usually best able to attract capital because investors are assured that their liability will be limited.

4. Degree of control and management:

The degree of control and management that an entrepreneur desires to have over business affects the choice of ownership organisation. In sole proprietorship, ownership, management, and control are completely fused, and therefore, the entrepreneur has complete control over business. In partnership, management and control of business is jointly shared by partners.

They have equal voice in the management of partnership business except to the extent that they agree to divide among themselves the business responsibilities.

Even then, they are legally accountable to each other. In a company, however, there is divorce between ownership and management. The management and control of company business is entrusted to the elected representatives of shareholders.

Thus, a person wishing to have complete and direct control of business prefers proprietary organisation rather than partnership or company. If he is prepared to share it with others, he will choose partnership. But, if he is just not bothered about it, he will go in for company.

5. Degree of risk and liability:

The size of risk and the willingness of owners to bear it is an important consideration in the selection of a legal form of ownership organisation. The amount of risk involved in a business depends, among other, on the nature and size of business. Smaller the size of business, smaller the amount of risk.

Thus, a sole proprietary business carries small amount of risk with it as compared to partnership or company. However, the sole proprietor is personally liable for all the debts of the business to the extent of his entire property. Likewise, in partnership, partners are individually and jointly responsible for the liabilities of the partnership firm.

Companies have a real advantage, as far as the risk goes, over other forms of ownership. Creditors can force payment on their claims only to the limit of the company's assets. Thus, while a shareholder may lose the entire money he put into the company, he cannot be forced to contribute additional funds out of his own pocket to satisfy business debts.

6. Stability of business:

Stability of business is yet another factor that governs the choice of an ownership organisation. A stable business is preferred by the owners insofar as it helps him in attracting suppliers of capital who look for safety of investment and regular return, and also helps in getting competent workers and managers who look for security of service and opportunities of advancement. From this point of view, sole proprietorships are not stable, although no time limit is placed on them by law.

The illness of owner may derange the business and his death cause the demise of the business. Partnerships are also unstable, since they are terminated by the death, insolvency, insanity, or withdrawal of one of the partners. Companies have the most permanent legal structure. The life of the company is not dependent upon the life of this member. Members may come, members may go, but the company goes on forever.

7. Flexibility of administration:

As far as possible, the form of organisation chosen should allow flexibility of administration. The flexibility of administration is closely related to the internal organisation of a business, i.e., the manner in which organisational activities are structured into departments, sections, and units with a clear definition of authority and responsibility.

The internal organisation of a sole proprietary business, for instance, is very simple, and therefore, any change in its administration can be effected with least inconvenience and loss. To a large extent, the same is true of a partnership business also. In a company organisation, however, administration is not that flexible because its activities are conducted on a large scale and they are quite rigidly structured.

Any substantial change in the existing line of business activity — say from cotton textiles to sugar manufacturing — may not be permitted by law if such a provision is not made in the ‘objects clause’ of the Memorandum of Association of the company.

Even when it is permitted by the Memorandum, it might have to be endorsed by the shareholders at the general meeting of the company. Thus, from flexibility point of view, sole proprietorship has a distinct edge over other forms.

8. Division of profit:

Profit is the guiding force of private business and it has a tremendous influence on the selection of a particular form of ownership organisation. An entrepreneur desiring to pocket all the profits of business will naturally prefer sole proprietorship.

Of course, in sole proprietorship, the personal liability is also unlimited. But, if he is willing to share the profits partnership is best. In company organisation, however, the profits (whenever the Board of Directors decides) are distributed among shareholders in proportion to their shareholding, but the liability is also limited. The rate of dividend is generally quite low.

9. Costs, procedure, and government regulation:

This is also an important factor that should be taken into account while choosing a particular form of organisation. Different forms of organisation involve different procedure for establishment, and are governed by different laws which affect the immediate and long-term functioning of a business enterprise. From this point of view, sole proprietorships are the easiest and cheapest to get started. There is no government regulation. What is necessary is the technical competence and the business acumen of the owner.

Partnerships are also quite simple initiated. Even a written document is not necessarily a prerequisite, since an oral agreement can be equally effective. Company form of ownership is more complicated to from.

It can be created by law, dissolved by law, and operate under the complicated provisions of the law. In the formation of a company, a large number of legal formalities is to be gone through which entails, at times, quite a substantial amount of expenditure.

For example, the cost incurred on the drafting of the Memorandum of Association, the Articles of Association, the Prospectus, issuing of share capital, etc. This cost is however, small in case of private companies. Besides, companies are subjected to a large number of anti-monopoly and other economic laws so that they do not hamper the public interest.

10. The number of owners and stakeholders

Individuals operating a business as the single owner could operate as a sole proprietorship. This is the simplest business structure that requires no additional formalities for forming the business. However, a sole proprietorship is possible only if there are no other owners and only if the owner is willing to assume personal liability for debts and risks the business takes on. Whenever multiple parties wish to share ownership of a business, a more formal legal structure becomes necessary.

There are myriad options for shared ownership including:

1. Partnership
2. Company
 - a. Public
 - b. Private
 - c. Company not distributing profits
3. Corporations

corporations are the most complex form of business organization to form, but allow for hundreds or even thousands of stakeholders to have an ownership interest in the business. Partnerships, Company, Corporations also allow for shared ownership, with varying degrees of liability protection. There are restrictions on who may take an ownership share in these types of corporations and an attorney should be consulted to determine which is the right option for you.

11. Whether your organization will be operating for profit

Non-profit organizations must be granted special tax-exempt status from the Internal Revenue Service (IRS) and must have a legitimate purpose for their organization to provide services to the public. Charitable and arts organizations routinely operate as nonprofit organizations.

12. The complexity of initial and annual paperwork requirements

All businesses other than sole proprietorships will require legal documentation and paperwork to begin operations. Partnerships, for example, will require an operating agreement as well as registration of the partnership with the state. Corporations have the most complex paperwork requirements. Corporations are considered separate legal entities and must file separate business tax returns.

13. The desired tax structure

Most types of business entities allow for the income and losses to pass through to the owners of the business, rather than the business being taxed separately. For example, partnerships allow for pass-through taxation. C-corporations, on the other hand, require the business to pay taxes on income at corporate rates. When dividends are issued to owners, the income is then taxed again.

14. A future intention to take your business public

Most businesses are privately owned by a small circle of individuals. LLCs, partnerships and corporations can be difficult to value and difficult to sell. Some companies, however, are publicly traded. This means that shares of the company can be sold. The companies traded on the Nepal Stock Exchange (NEPSE) are publicly traded companies. Those who intend to take their companies public or who wish to ensure that the easy sale of their business can be facilitated in

Forms of business ownership in Nepal

Introduction

A key first step for any entrepreneur is setting up an organization that will be used to formally embark on the business journey, but many new business owners struggle to identify the best way to move forward. One of the first decisions that you will have to make as a business owner is how the company should be structured. This decision will have long-term implications, so consult with an accountant and attorney to help you select the form of ownership that is right for you. These are the most common ways to organize a business, from the simplest through the most complex.

1. Sole Proprietorship/ Private Firm
2. Partnership Firm
3. Co operatives
4. Company
 - 4.1. Public
 - 4.2. Private
 - 4.3. Not sharing profit

1. Sole Proprietorship/ Private Firm

A sole proprietorship is an unincorporated business owned by a single person. Sole proprietorships are easy and inexpensive to create and operate. The company is not even required to file a separate tax return—all profits and losses are reported on the owner's personal return. In this form a single individual is solely responsible for providing the capital, for bearing the risk and for overall management and control of the enterprise. It is the one man show owned, managed and operated by one person. According to professor Henry, "the individual proprietor is the form of business organization at the head of which stands an individual as one who is responsible, who directs its operations and who alone runs the risk of failure."

1.1 Characteristics

- The owner of the business is responsible for all of the business's debts. If the business institution cannot pay its suppliers, the owner is personally liable. This is known as unlimited liability.
- The owner of a sole proprietorship has limited options for financing one's business. Debt is generally the owner's only source of working capital because the owner has no stock or memberships to sell. If someone else brings in capital and helps with the management of the business, then it is a partnership, not a sole proprietorship. For this reason, sole proprietorships work best for small businesses without large capital needs.

1.2 Registration of a Private Firm

A Private Firm has to follow the procedures below to register a business in Nepal.

According to Section 3 of the Private Firm Registration Act, 2014, the sole proprietorship business institution needs to be registered either in Department of Commerce (in case of commerce related firm), Department of Cottage and Rural Industry in the case of cottage and rural industry, and Department of Industry for any other industry.

Any person who intends to register a private firm may submit an application in the prescribed legal format to the relevant Department along with the prescribed official fee.

The application should contain the following information:

- i. The name of the Private Firm
- ii. The address of the Firm
- iii. The objectives, functions and the particulars of goods or commodity to be transacted by the private firm.

iv. The name and address of the owner, and the name of his/her father, mother and grandfather, grandmother.

Registration Fee :

Based on the capital of the firm, the registration fee needs to be paid which is as follows:

S.N.	Capital (in NPR)	Fee (NPR)
1.	1,00,000 or less	600
2.	More than 1,00,000 and less than 3,00,000	2,000
3.	More than 3,00,000 and less than 5,00,000	4,000
4.	More than 5,00,000 and less than 10,00,000	7,500
5.	More than 10,00,000 and less than 50,00,000	10,000
6.	More than 50,00,000	15,000

NB: Certified copy of the Citizenship Certificate needs to be presented along with other essential documents for the registration of the private firm.

1.3 Renewal of the Firm

A private firm's duration is three years after which the firm needs to be renewed. The renewal fee is given below:

S.N.	Capital (in NPR)	Fee
1.	1,00,000 or less	300
2.	More than 1,00,000 and less than 3,00,000	500
3.	More than 3,00,000 and less than 5,00,000	800
4.	More than 5,00,000 and less than 10,00,000	1,200

5.	More than 10,00,000 and less than 50,00,000	1,700
6.	More than 50,00,000	2,300

Example in context to Nepal : Bhatbhateni Supermarket

1.4 Advantages

1.Simple To Create

One of the most attractive features of a proprietorship is how fast and simple it is to begin. If an entrepreneur wants to operate a business under his or her own name, he or she simply obtains the necessary licenses from state, county, and/or local governments and begins operation. Entrepreneurs who operate a business under a trade name usually must file a certificate of trade name (or fictitious business name statement) with the secretary of state. Filing this statement notifies the public of the identity of the person behind the business. For most entrepreneurs, it is possible to start a proprietorship in a single day.

2. Least Costly Form Of Ownership To Begin

In addition to being easy to begin, the proprietorship is generally the least expensive form of ownership to establish. There is no need to create and file legal documents that are recommended for partnerships and required for corporations. An entrepreneur simply goes to the city or county government, states the nature of the business he or she will start, and purchases the necessary business licenses.

3. Profit Incentive

One major advantage of proprietorships is that once owners pay all of their companies' expenses, they can keep the remaining profits (less taxes, of course). Profits are only taxed once on the owner's personal tax returns. The profit incentive is a powerful one, and profits represent an excellent way of "keeping score" in the game of the business.

4. Total Decision-making Authority

Because the sole proprietor is in total control of operations, he or she can respond quickly to changes, which is an asset in a rapidly shifting market. The freedom to set the company's course of action is a major motivational force. For those who thrive on the challenge of seeking new opportunities in business, the freedom of fast, flexible decision making is vital. Many sole proprietors relish the feeling of control they have over their personal financial futures and the recognition they earn as the owners of their businesses.

5. No Special Legal Restrictions

The proprietorship is the least-regulated form of business ownership. In a time when government regulation seems never ending, this feature has much merit.

6. Easy To Discontinue

If an entrepreneur decides to discontinue operations, he or she can terminate the business quickly even though he or she will still be personally liable for any outstanding debts and obligations the business cannot pay.

1.5 Disadvantages

Entrepreneurs considering the sole proprietorship as a form of ownership also must be aware of its disadvantages.

1.Unlimited Personal Liability

Probably the greatest disadvantage of a sole proprietorship is the unlimited personal liability of the owner, meaning that the sole proprietor is personally liable for all of the business's debts. In a proprietorship, the owner is the business. He or she owns all of the business's assets, and if the business fails, creditors can force the sale of these assets to cover its debts. The failure of a business can ruin a sole proprietor financially.

2. Limited Skills And Capabilities

A sole proprietor does not have the range of skills that running a successful business requires. Each of us has areas in which our education, training, and work experiences have taught us a great deal, yet there are other areas in which our decision-making ability is weak. Many business failures occur because owners lack the skills, knowledge, and experience in areas that are vital to business success.

3. Feelings of isolation :

Running a business alone allows an entrepreneur maximum flexibility, but it also creates feelings of isolation; there is no one else to turn to for help when solving problems or getting feedback on a new idea. Most sole proprietors admit that there are times when they feel the pressure of being alone and completely responsible for every major business decision.

4. Limited Access to Capital :

If a business is to grow and expand, a sole proprietor often needs additional financial resources. A sole proprietorship is limited to whatever capital the owner can contribute and whatever money he or she can borrow.

5. Lack of continuity of Business :

Lack of continuity is inherent in a sole proprietorship. If the proprietor dies, retires, or becomes incapacitated, the business automatically terminates. Unless a family member or employee can take over (which means that person is now a sole proprietor), the business will disappear.

2. Partnership Firm

Any business registered in a record of the Government of Nepal by the persons who have agreed to share the profit of the business carried on by them in a single name under an agreement (Kabuliat) made with each other which entitles all partners to take part in all business for each partner or entitles any of them for the same on behalf of all others.

The persons who have entered into the agreement are called partners. The partnership is not a separate legal person but an aggregate of the partners.

2.1 Characteristics

- Use of property of the partnership: No Partners shall use or cause to use the property of the partnership firm for any other purpose other than the purpose of the partnership business.
- No compulsion for additional capital: No partner shall be compelled to add more capital than the amount prescribed in the agreement of partnership deed despite the request of other partners.
- No substitution of partners: No partner shall, without the consent of all other partners, make or keep to any other person as a partner in the firm instead of him/her.
- Every partner may participate in the business:

Except a partner who is prohibited to take part in the management of partnership pursuant to the agreement, every partner shall be entitled to participate in the management of the business of the firm unless other partner opposes it.

Provided that, without the consent of all the partners no act which is not related with the business of a firm shall be performed under the name of partnership.

- Liability of a partner: Every partner shall be liable jointly or personally with all the other partners for all the acts of the firm done while he/she was a partner.
- Partner may transfer his/her interest : If any partner transfers his/her interest in the firm by a sale, mortgage or by any other method to someone else such person may be entitled

to claim the profit or any other amount to be received by the said partner from the business of partnership within that period.

2.2 Registration of a Partnership Firm

A firm shall have to be registered in the record of the concerned Department within a period of Six months from the date when the partners enter into the agreement of partnership.

In order to register a firm, an application in the prescribed legal format shall be submitted before the concerned Department, stating the details as follows, along with the official fees and a copy of the agreement concluded between partners, if any,

- (a) Full Name of the firm
- (b) The Principal place of business of the firm,
- (c) The objectives of the firm including the short description of the nature of the goods or services, as the case may be, which the firm intends to run the business,
- (d) The full name, surname and permanent address of the partners,
- (e) The matter of restriction imposed on the power of a partner, if any,
- (f) The types of partnership and the capital subscribed by each partner,
- (g) The name of a partner or partners, who represent the firm,
- (h) The mode to share the profit and loss between /among partners,
- (i) The mode to calculate the profit of a firm.

Registration Fee

S.N.	Capital (in NPR)	Fee
1.	1,00,000 or less	Rs. 600
2.	More than 1,00,000 and less than 3,00,000	Rs. 2,000
3.	More than 3,00,000 and less than 5,00,000	Rs. 4,000
4.	More than 5,00,000 and less than 10,00,000	Rs. 7,500
5.	More than 10,00,000 and less than 50,00,000	Rs. 10,000
6.	More than 50,00,000	Rs. 15,000

2.3 Renewal of the Firm

A partnership firm needs to be renewed each year, within a period of thirty five days of the expiry of the fiscal year of the firm. The renewal fee can be seen below:

S.N.	Capital (in NPR)	Fee
1.	1,00,000 or less	Rs. 100
2.	More than 1,00,000 and less than 3,00,000	Rs. 125
3.	More than 3,00,000 and less than 5,00,000	Rs. 150
4.	More than 5,00,000 and less than 10,00,000	Rs. 200
5.	More than 10,00,000 and less than 50,00,000	Rs. 250
6.	More than 50,00,000	Rs. 300

It is now mandatory to register your business in your respected municipality. In order to register your enterprise you need to provide the following documents:

1. Rental agreement
2. Citizenship certificate
3. Two pp size photo of the business owner

Example in context to Nepal : Akama Hotel

2.4 Advantages

1.Easy To Establish

Like the proprietorship, the partnership is easy and inexpensive to establish. The owner must obtain the necessary business licenses and submit a minimal number of forms. In most states, partners must file a Certificate for Conducting Business as Partners if the business is run under a trade name.

2. Complementary Skills

In a sole proprietorship, the owner must wear lots of different hats, and not all of them will fit well. In successful partnerships, the parties' skills and abilities usually complement one another, strengthening the company's managerial foundation. A common need for many entrepreneurs today is the need for partners with technical skills. Many new businesses have strong Web-based components or are app-based business models. If an entrepreneur lacks the requisite technical skills, bringing in a "tech partner" who can handle the technical elements of the business may be necessary.

3. Division Of Profits

There are no restrictions on how partners distribute the company's profits as long as they are consistent with the partnership agreement and do not violate the rights of any partner. The partnership agreement should articulate each partner's contribution to the business and his or her share of the profits. If the partners fail to create an agreement, the RUPA says the partners share equally in the partnership's profits, even if their original capital contributions were unequal.

4. Larger Pool Of Capital

The partnership form of ownership can significantly broaden the pool of capital available to a business. Each partner's asset base enhances the business's pool of capital and improves its ability to borrow needed funds; together, partners' personal assets provide a larger capital base and support greater borrowing capacity.

5. Ability To Attract Limited Partners

When partners share in owning, operating, and managing a business, they are general partners. General partners have unlimited liability for the partnership's debts and usually take an active role in managing the business. Every partnership must have at least one general partner, although there is no limit on the number of general partners a business can have.

6. Minimal Government Regulation

Like the sole proprietorship, partnerships are not burdened with excessive red tape.

7. Flexibility

Although not as flexible as a sole proprietorship, a partnership can generally react quickly to changing market conditions because the partners can respond quickly and creatively to new opportunities. In large partnerships, however, getting partners' approval can slow a company's strategic actions. Unless the partnership agreement states otherwise, each partner has a single vote in the management of the company no matter how large his or her contribution to the partnership is.

8. Taxation

A partnership itself is not subject to federal taxation. It serves as a conduit for the profit or losses it earns or incurs; its net income or loss is passed through to the partners as personal income, and the partners pay income tax on their distributive shares at their individual tax rates. Partners must pay taxes on their respective shares of the partnership's net income, even if none of that income actually is distributed to them. A partnership, like a sole proprietorship, avoids the "double-taxation" disadvantage associated with the corporate form of ownership.

2.5 Disadvantages

Before entering into a partnership, every entrepreneur should double-check the decision to be sure that the prospective business partner will add value to the business. A partnership is like a business marriage, and before entering into one, an entrepreneur should be aware of the disadvantages.

1. Unlimited Liability Of At Least One Partner

At least one member of every partnership must be a general partner. The general partner has unlimited personal liability for any debts that remain after the partnership's assets are exhausted. In addition, general partners' liability is joint and several, which means that creditors can hold all general partners equally responsible for the partnership's debts or can collect the entire debt from just one partner.

2. Capital Accumulation

Although the partnership form of ownership is superior to the proprietorship in its ability to attract capital, it is generally not as effective as the corporate form of ownership, which can raise capital by selling shares of ownership to outside investors.

3. Difficulty In Disposing Of Partnership Interest

Most partnership agreements restrict how partners can dispose of their shares of the business. Usually, an agreement requires a partner to sell his or her interest to the remaining partner(s). Even if the original agreement contains such a requirement and clearly delineates how the value of each partner's ownership will be determined, there is no guarantee that the other partner(s) will have the financial resources to buy the seller's interest. When the money is not available to purchase a partner's interest, the other partner(s) may be forced to accept a new partner or dissolve the partnership, distribute the remaining assets, or begin again.

A similar problem arises when a partner dies. The deceased partner's interest in the partnership passes to his or her heirs, in which case the partnership is dissolved and the heirs receive the value of the deceased partner's share of the business.

4. Potential For Personality And Authority Conflicts

Being in a partnership is much like being in a marriage. Making sure that partners' work habits, goals, ethics, and general business philosophy are compatible is an important step in avoiding a nasty business divorce. Engaging in serious discussions with potential partners before launching a business together is a valuable and revealing exercise. A better way to "test-drive" a potential partnership is to work with a prospective partner on a joint project to get a sense of how compatible your work styles, business philosophies, and personalities really are. That project might be a small business venture or working together to create a business plan for the proposed partnership. The idea is to work together before committing to a partnership to determine how compatible the potential partners' values, goals, personalities, views, and ethics are.

5. Partners Are Bound By The Law Of Agency

Each partner is an agent for the business and can legally bind the partnership and, hence, the other partners, to contracts—even without the remaining partners' knowledge or consent. Because of this agency power, all partners must exercise good faith and reasonable care when performing their responsibilities. For example, if a partner signs a three-year lease for a business jet, a move that only worsens the small company's cash flow struggles, the partnership is legally bound by the agreement even though the remaining partners may not be in favor of the decision.

3. Cooperative

Co-operative organization is the form of organization where in persons voluntarily associate together as business being a basis of equality for promotion of economic interest of themselves. It is a voluntary association of persons with same interest. It is guided by service motive. It is established for economical and social development of weaker section of the society. It tries to solve similar problems. In all form of business organizations, the objective of owner is to make profit. But its objective is to provide services. Its motto is all for one and one for all. It helps through mental support too. it can be defined as voluntary association of person usually of limited means forming together in equal basis for promotion of certain economic or business interest.

3.1 Features:

1. Voluntary association and open membership

It is voluntary association in which membership is open for all people with common interest. People can come together to satisfy the needs with common effort. In Nepal at least 25 members are required for establishment of cooperative organization.

2. Equal voting right

It is based on democratic principle. It is based on equality of status of all members. Decisions and other bills are passed on the basis of majority votes.

3. Democratic management

Management is always in democratic lines. All member of organization elect its managing committee. One man can give only one vote. Managing committee will then work for common benefit of all members.

4. Service motive:

Its objective is to provide service to member. It's not profit motive. Its aim is not to earn maximum profit as in all form of organization. Even though it can earn profit by extending their services to non members but they collectively work for service.

5. Legal existence:

In Nepal, these types of organizations are established under cooperative act. There must be at least 25 members and they all must be guided through common objective

6. Cash transactions

In this type of organization transactions are done only through cash. There are no credit transactions. It eliminates bad debt too.

7. Disposal of surplus:

It is service motive. Even though it can make surplus, the surplus amount is used for extending the surplus facility.

8. Education

The success of organization depends upon the education of its members. They should be constantly educated with objectives.

9. Liability:

Liability of member is limited. It should use the word "ltd" after its name.

3.2 Registration of cooperatives in Nepal

A cooperative organization can carry out its functions only after its registration under the cooperative act 2048. For registration of cooperatives following procedures should be followed.

1. Preliminary meeting:

According to the cooperative act 2048 there should be at least 25 members to form a cooperative society. Preliminary meeting must be held before applying for the registration. The meeting is held in the presence of 25 members under 1 chairman among them. The following things should be discussed in the meeting:

- Commencement of the business
- The name and address of the society
- The objectives of the society
- The value of each share
- Membership fee

2. Filing an application for registration

After preparing and passing proposed by laws and working schemes in the preliminary general meeting. In application should be submitted to the office of registrar, department of cooperatives, and government of Nepal

Following things are mentioned in the application form

1. Proposed name of society
2. Address
3. Objectives
4. Working areas
5. Liabilities
6. Total share capital
7. Total number of shares to be paid
8. Two copies of law of proposed society
9. Original copy of working scheme
10. Copies of citizen certificate
11. Application must be signed by chairman

3. Receiving the certificate of registration

After filing application for registration, certificate of registration is to be received. After applying application along with document, they are submitted at the registration office. Then the registrar checks all the documents. If the documents are satisfactory then registrar will issue certificate of registration. After receiving certificate of registration, the society can operate.

Legal provisions for dissolution of co-operative society

According to the cooperative act 2048 cooperative society can be dissolved under following circumstances

1. Two third majority of total number of society can take decisions of dissolution.
2. Registrar can dissolve it, if application with reasonable clause is received.
3. Registrar can dissolve it, if the society is found inactive and not operating since to years.
4. The registrar can dissolve it, if it is found operating against the law and objectives of it.

3.4 Advantages

1. Less Taxation.

Similar to an LLC, cooperatives that are incorporated normally are not taxed on surplus earnings (or patronage dividends) refunded to members. Therefore, members of a cooperative are only taxed once on their income from the cooperative and not on both the individual and the cooperative level.

2. Funding Opportunities.

Depending on the type of cooperative you own or participate in, there are a variety of government-sponsored grant programs to help you start. For example, the USDA Rural Development program offers grants to those establishing and operating new and existing rural development cooperatives.

3. Reduce Costs and Improve Products and Services.

By leveraging their size, cooperatives can more easily obtain discounts on supplies and other materials and services. Suppliers are more likely to give better products and services because they are working with a customer of more substantial size. Consequently, the members of the cooperative can focus on improving products and services.

4. Perpetual Existence.

A cooperative structure brings less disruption and more continuity to the business. Unlike other business structures, members in a cooperative can routinely join or leave the business without causing dissolution.

5. Democratic Organization.

Democracy is a defining element of cooperatives. The democratic structure of a cooperative ensures that it serves its members' needs. The amount of a member's monetary investment in the cooperative does not affect the weight of each vote, so no member-owner can dominate the decision-making process. The "one member-one vote" philosophy particularly appeals to smaller investors because they have as much say in the organization as does a larger investor.

3.5 Disadvantages

1. Obtaining Capital through Investors.

Cooperatives may suffer from slower cash flow since a member's incentive to contribute depends on how much they use the cooperative's services and products. While the "one member-one vote" philosophy is appealing to small investors, larger investors may choose to invest their money elsewhere because a larger share investment in the cooperative does not translate to greater decision-making power.

2. Lack of Membership and Participation.

If members do not fully participate and perform their duties, whether it be voting or carrying out daily operations, then the business cannot operate at full capacity. If a lack of participation becomes an ongoing issue for a cooperative, it could risk losing members.

Example in context to Nepal: Nabali Bachat Tatha Rin Sahakari Sanstha

4. Company

A company is an incorporated business institution that has a legal personality of its own. A company exists independent of its' shareholders. Consequently, a company is an entity created by law and can only be terminated by the operation of law.

4.1 Features of a company:

- **Limited Liability:** The biggest advantage of a company, as opposed to an unincorporated firm, is the limited liability of the shareholders. According to Section 8 of the Companies Act, 2063, the liability of a shareholder of a company in respect of its transactions shall be limited only to the maximum value of shares which he/she has subscribed or undertaken to subscribe.
- **Transferable shares :** A crucial element in the success of the registered company as a form of business association is the idea of the transferable share. Shares in a company are transferable in the manner provided for in the company's articles.
- **Perpetual Succession :** A company is able to enjoy a perpetual existence, the death or retirement of the members having no necessary effect on its continued existence, a fact which obviously is not the case with the partnership.
- **Separate Legal Personality :** As opposed to a private firm, a company has a legal personality of its own. It can exercise its own rights and has to abide by its duty as per the

law. A legal suit brought in the name of the company does not hamper the lives of the shareholders.

4.1.1 Public and Private Company

Generally speaking, public companies are ones which can raise money by inviting the public to purchase their shares.

Private companies refer to those companies which cannot borrow money from the public and whose stock is not floated in the market.

4.1.2 Distinction between Public and Private Company

S.N.	Basis of Difference	Public Company	Private Company
1.	Minimum paid-up Capital	Rs. 1,00,00,000	No minimum paid-up capital prescribed
2.	Number of Members	7 to any number of members	1 to 101 members
3.	Transfer of share or securities	Shares and securities are freely transferable	Shares and securities can only be transferred to the existing shareholders of the company
4.	Number of Board of Directors	3 to 11	11
5.	Presence of Company Secretary	Mandatory	Optional
6.	General Assembly	Mandatory	In accordance with the Articles

Fees Payable for Company Registration

Certain fees are payable to the Office of the Company Registrar for Company Registration. The fees depended on the amount of “authorized capital”, and are as follows for Private Limited Companies:

Authorized Capital, from and up to (NPR)	Fees Payable (NPR)
100,000	1,000
500,000	4,500
2,500,000	9,500
10,000,000	16,000
20,000,000	19,000
30,000,000	22,000
40,000,000	25,000
50,000,000	28,000
...	...
100,000,000	43,000
More than 100,000,000	30 rupees per 100,000

4.1.3 Company Not Distributing Profits

Generally speaking, a company that has been established with the intention of not distributing the dividends among its owners is referred to as a company not distributing profits. This does not, in any way, imply that the company cannot make profits for itself. The profit so made has to be utilized for the benefit of the company itself. It cannot be distributed to the owners.

Features of Company Not Distributing Profits

- Objective of such company: Such companies need to be incorporated with an objective to develop and promote any profession or occupation or to protect the collective rights and interests of the persons engaged in any specific profession or occupation or to carry on any enterprise for the attainment of any scientific, academic, social, benevolent or public utility or welfare objective on the condition of not distributing dividends.

- Number of Members: In contradiction to the other kinds of companies, these companies do not have shareholders. The persons who initiate the company are called promoters. There needs to be a minimum of five promoters to open such company. After the incorporation, it may have any number of its members, with a minimum of five members.

The membership is not transferable to others.

- Capital: A specific amount of capital is not necessary to incorporate such companies. The company may, however, receive membership fees from its members and receive any donation, a gift for the fulfilment of its objectives.
- Non-distribution of the Dividend: The company shall not distribute dividend, bonus or any other amount, from the profits earned by it, to its members or employees; and the profits earned by the company shall be used to increase the capital of the company or for the attainment of its objectives.
- Registration Fee: The registration fee of such company is Rs. 15,000.

4.2 Registration of a Company

In order to register a company, the interested person should make an application to the Company Registrar's Office in the prescribed legal format, along with the prescribed official fee (depending on the Authorized capital of the company), with the following documents:

- i. Memorandum of Association
- ii. Article of Association
- iii. In case of the public company: copy of the agreement, if any, entered into between the promoters prior to incorporation
- iv. In case of a private company: copy of the consensus agreement
- v. Approval or license from a competent authority, if required
- vi. **Where the promoter is a Nepalese citizen:** a certified copy of the citizenship certificate
Where the promoter is a body corporate: registration certificate of such body, the decision of the Board of Directors, and major documents relating to the incorporation of such body.

Note: Articles of Association is not required for single shareholder company.

After making necessary inquiries, the Company Registrar's Office will register such company within 15 days and grant the company registration certificate.

4.3 Post Registration Procedure

The company, once registered as a Private Company, has a number of compliance obligations. They are as follows:

- Registered Office Notification: The Registered office of a Nepalese company should be in Nepal under applicable rules under Companies Act. A board outlining the name of the

company and the registration number should be displayed clearly where the company is present. The company should provide to the Companies Registrar Office details of the address where the company is established within three months of registration of the company.

- Filing Shareholding Details: Once the share capital has been issued and paid-up to the company by a shareholder, the company should prepare a Shareholders Register and file with the Office of Companies within one month of it being paid-up.
- Directors' Details: Details of the directors of the company as the prescribed need to be submitted within seven days of the Directors taking office.
- Annual General Meeting: The company should conduct an annual general meeting of shareholders within one year of establishment. This is not required for Private Companies if clearly mentioned in the Articles and Memorandum of Association.
- Accounting Requirements: The company's accounts need to be kept and should be audited by an auditor every year. Auditor has to be appointed by the shareholders. Appointment of auditor needs to be notified to the Office of Companies Registrar within 15 days of appointment.
- Filing Requirements: Annual audited accounts, auditor's report, and the report about number of shareholders of the company has to be filed within 6 months of the end of the financial year.

4.5 Advantages

1. The owners have limited liability. The owner's personal assets are protected from judgments and defaults on company debts.
2. Owners can choose how the business pay taxes. It could be a proprietorship, a partnership or a corporation.
3. Most states don't require LLCs to have annual meetings.
4. An LLC is not required to have a board of directors.
5. The number of shareholders is unlimited.

4.6 Disadvantages of Company

1. Legal and accounting costs are higher than proprietorships.
2. LLCs must file articles of incorporation with the state of domicile.
3. Owners must create an operating agreement that defines management authority and limits to making decisions.
4. In some cases, an LLC will cease to exist upon the death of a member, unless otherwise specified in the operating agreement.

Example in context to Nepal : Nepal Life Insurance Company

Company Profile : Worldlink Communications P. Ltd

How is it registered?

It is registered as a limited liability company.

Where was the company registered?

It was registered in Company Registrar's Office.

An application was sent to the Company Registrar's Office in the prescribed legal format, along with the prescribed official fee (depending on the Authorized capital of the company), with the documents as mentioned above.

Where the promoter is a body corporate: registration certificate of such body, the decision of the Board of Directors, and major documents relating to the incorporation of such body.

Why is the company registered as a limited liability company?

As the name implies, members' liabilities for the debts and obligations of the LLC are limited to their own investment. Hence if Worldlink as a company gets sued, their personal assets, like bank accounts and real estate, are protected. At most, only the money they put into the business is, and nothing else.

Such a large company produces a lot of income to which can subject a hefty tax. LLC companies can treat the income as a personal income and therefore subjected tax. Worldlink has three owners, so the taxation that they have to fill tax as partnership. LLC doesn't pay taxes directly, but the business net income is taxed through the personal tax return of the owner or owners — as a sole proprietorship, for a one-member LLC or as a partnership for a multiple-member LLC. This is called "pass-through taxation.". The tax rate for an LLC depends on the total income of the owner. At higher levels of net income, the LLC may be paying taxes at a lower tax rate than a corporation.

Also since the company is registered as LLC, the number of owners are limitless. Hence there are a number of owners for the single company. Some legal structures limit the number of people

allowed to file as owners. With an LLC, there is no limit to the number of owners. Corporate owners may be subject to double taxation, while an LLC owner is not.

It is also not necessary for the amount of investment in the company to be equal to percentage of ownership. When an LLC is formed, members create an operating agreement, in which different percentages of company profits and losses can be assigned to owners regardless of the amounts of their initial investments. So a deal can be made with the investment to have them finance half of the business without owning half of the business.

LLCs are formed under state law, which gives the members the right to manage the business of the company themselves. In this type of management structure, each member has the right to participate in the day-to-day operation of the company, and any single member has the power to bind the LLC in business transactions. For example, the signature on a contract of a single member of a member-managed LLC on behalf of the company is enough to obligate all of the members of the LLC to honor the terms of the agreement. This decentralized management power can be limited in an operating agreement adopted by the members.