



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

WESTERN
INDIA
REGIONAL
COUNCIL

Date: April 29, 2026

To,
CS Pawan G Chandak
The President
The Institute of Company Secretaries of India (ICSI)

Subject: Representation for permitting conversion of Section 8 companies from "limited by shares" to "limited by guarantee" without change in status.

Respected Sir,

We, the Western India Regional Council (WIRC) of the Institute of Company Secretaries of India (ICSI), respectfully submit this representation requesting ICSI to make an appropriate representation to the Central Government to come up with a clear regulatory framework under the Companies Act, 2013 for the conversion of a *Section 8 Company Limited by Shares* into a *Section 8 Company Limited by Guarantee*, without being treated as conversion into another class of company, and to grant consequential relaxations from mandatory dematerialization requirements.

This representation is being made to highlight certain practical challenges faced by Section 8 companies incorporated under the provisions of the Companies Act, 2013, and to seek suitable regulatory clarification and relief in the larger interest of not-for-profit entities.

Regulatory References

1. Section 8 of the Companies Act, 2013
2. Section 13, 14, 18 and 117(1) along with Section 66 (if Applicable) of the Companies Act, 2013

Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद धर्मं चर। इष्टकारेणैव तपस्वित्। परमार्थे लोकेऽहोऽपहृद्यते

Mission

"To develop high calibre professionals facilitating good corporate governance"

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3. Rule 21 and Rule 22 of the Companies (Incorporation) Rules, 2014
4. Companies (Incorporation) Amendment Rules, 2023 – introduced procedural amendments and enhanced disclosure requirements; however, no provision has been made to address conversion of a Section 8 company from limited by shares to limited by guarantee.

Regulation 113 – Functions of the Regional Councils

As per Regulation 113 of the Company Secretaries Regulations, 1982, the Regional Council is empowered to make representations on matters of professional and regulatory significance.

Background

Section 8 companies are established with charitable and not-for-profit objectives, and their operational needs often evolve over time. Many Section 8 Companies are initially incorporated as companies limited by shares, subsequently find that a guarantee-based structure is more aligned with their long-term governance, stakeholder participation, and non-profit orientation. In such cases, a company limited by guarantee is a more appropriate structure, as it reflects member commitment rather than financial ownership.

Accordingly, many such entities seek to transition from a share-based structure to a guarantee-based structure.

At present, such a transition is either unclear or may be interpreted as a conversion into a different class of company, thereby attracting procedural complexities, regulatory ambiguity, and unintended compliance burdens. While Section 8(4)(i) requires approval of the Central Government for alteration of constitutional

documents, and the MCA Notification dated 21 May 2014 delegates certain powers, the specific scenario of conversion from limited by shares to limited by guarantee is not expressly contemplated. This lack of clarity discourages genuine not-for-profit entities from restructuring in a manner that better supports their objectives.

However, the existing regulatory framework does not provide a clear mechanism for such conversion within Section 8 companies.

Further, even after the Companies (Incorporation) Amendment Rules, 2023, no provision or clarification has been introduced to address this issue, thereby leaving the regulatory gap unresolved.

This results in ambiguity regarding the competent authority, with neither the Registrar of Companies nor the Regional Director having clearly defined jurisdiction.

Further, procedural limitations aggravate the issue. The prescribed e-forms do not facilitate such conversion:

a. Form MGT-14:

Presently in Form MGT – 14, under the heading **Information about Resolution** >> I. Details of Resolution >> a(i) Purpose of Passing the Resolution >> under drag down option there is an available option for “**Conversion of Company Limited by Guarantee into a Company Limited by Shares**”. However, there is no corresponding option available for “**Conversion of Company Limited by Shares into a Company Limited by Guarantee**”.



0 NUMBER OF RESOLUTION(S) FOR WHICH THE FORM IS BEING FILED

Enter Here

I. Details of the resolution

a (i) Purpose of passing the resolution

b (i) Section of the Companies Act, 2013 under which passed

(e) Subject matter of the resolution

Enter Here

(g) Indicate the authority passing or agreeing to the resolution

Board of directors Shareholders Class of

(h) Whether ordinary or special resolution or with requisite m

Ordinary resolution Special resolution Re

10 Service request number (SRN) of Form INC-28

Enter Here

Select

Select

Entrenchment of Articles

Change of address of the registered office outside the limit of the city / town / village where the registered office is si

Change of address of registered office resulting in change in RoC within the same State

Change of address of registered office resulting in change in State within the jurisdiction of same RoC or outside the

Alteration in Memorandum of Association except in case of change in name, registered office, object clause or chan

Alteration in authorized share capital

Alteration in memorandum for change in name

Alteration in object clause

Alteration of Articles

Conversion of public company into private company

Conversion of private company into public company

Conversion of company limited by guarantee into a company limited by shares

Conversion of Unlimited Liability Company into a Company Limited by shares

Conversion of Unlimited Liability Company into a Company Limited by guarantee

Allotment of Securities

Approval of scheme for providing financial assistance for purchase of its own shares

Buyback of shares or specified securities

Appointment of more than Fifteen Directors

b. Form INC-18:

Due to the absence of the option in Form MGT - 14 for Conversion of Company Limited by Shares into a Company Limited by Guarantee, the company is unable to proceed with the filing of Form INC-18, as the error occurred while submitting the INC 18 that **“The SRN of MGT 14 is not filed for the purpose of Conversion from Section 8 Company to any other Kind (before RD approval in INC 18)”**.

Error Message

Error Type
Error

Error Message
SRN of MGT-14 is either not valid or not associated with the CIN or not filed for the purpose of Conversion from Section 8 company to any other kind (before RD approval in INC-18). Please provide a valid SRN.

Entity's Details

All fields marked in * are mandatory

Stakeholders, please note that you are required to submit MOA and AOA of the Company as link filing which will open after you submit the Form-INC-18. You are not required to attach the PDF of MOA & AOA in the Form.

1(a) *Corporate identification number of the company (CIN) OR Enter Company Name To find CIN

085100642010401274204

Search Here

2 (a) *Name of the Company (b) * Registered office address of the company (c) *email Id of the company

THE DALAL FAMILY CHARITABLE TRUST Prof No 33, ABCD Court, 1st floor, C M 11, Fort, Mumbai

c. Form INC – 27:

Further, even if an attempt is made to undertake the Conversion of Company Limited by shares into a Company Limited Guarantee through Form INC – 27, there appears to be no provision or functionality within the form that facilitate or support this specific type of Conversion.

The screenshot shows a process flow for Form-INC-27 with steps: Form INC 27, Company Details, Attachment & Declaration, Form e-MOA, Company Details, Attachment & Declaration, Form e-AOA, Company Details, Attachment & Declaration, and Review & Submit. Below the flow, it states: "All fields marked in * are mandatory." and "Stakeholders, please note that you are required to submit MOA and AOA of the Company as link filing which will open after you submit the Form-INC-27. You are not required to attach the PDF of MOA & AOA in the Form." The form section is titled "Entity's details" and includes:

1. *Application for

- Conversion of private company into public company
- Conversion of public company into private company
- Conversion of Unlimited Liability Company into a Company limited by shares
- Conversion of Unlimited Liability Company into a Company limited by guarantee
- Conversion of company limited by guarantee into a company limited by shares

2. *Corporate identification number (CIN)

Enter here: or Enter Company Name To find CIN:

This creates a procedural gap, as there is no clear electronic mechanism provided for effecting the conversion of a Company Limited by Shares into a Company Limited by Guarantee through any prescribed forms currently available.

Justification

(a) Nature of Section 8 Companies

Section 8 companies are fundamentally not-for-profit institutions, and their capital structure does not serve the same purpose as in commercial entities. The concept of shareholding in such companies does not represent economic ownership or profit entitlement, but is merely a structural formality. In this context, a company limited by guarantee is inherently more appropriate, as it reflects member commitment towards the objectives of the organization rather than financial participation.

(b) No change in regulatory character

Permitting the conversion of a company limited by shares into a company limited by guarantee would not bring about any material change in the nature or operational functioning of the entity. Such a conversion would neither modify the company's charitable objects nor impact the regulatory oversight applicable under Section 8. It would not result in any distribution of profits to members, nor would it amount to a conventional reduction of capital, given that the existing capital can reasonably be considered as having been applied toward the company's objects. Accordingly, the fundamental character of the company, as well as the regulatory framework governing it, would remain unaffected.

Request

In light of the foregoing, the rationale for conferring appropriate powers upon the Registrar of Companies stems from the intrinsic nature of Section 8 companies as not-for-profit entities, wherein the capital structure does not hold the same relevance as it does in commercial enterprises. In this context, a company limited by guarantee more accurately represents the commitment of its members, as opposed to reflecting financial ownership.

Permitting a change in the capital structure from a company limited by shares to a company limited by guarantee does not affect the fundamental nature of the entity. The charitable objectives remain intact, regulatory oversight under Section 8 continues to apply, and there is no distribution of profits. Furthermore, such a restructuring should not be construed as a conventional reduction of capital, as the existing capital can reasonably be regarded as having been applied toward the company's objects. Accordingly, the substantive character of the entity remains unchanged.



In view of the foregoing, we respectfully submit that suitable provisions or clarifications may be introduced to facilitate the restructuring of Section 8 companies.

We remain fully available to provide any additional information or clarifications deemed necessary and earnestly seek your favorable consideration of our representation.

We thank you for your kind attention to this matter.

Thanking you,

Yours sincerely,



CS Yogesh Choudhary
Chairman
Western India Regional Council