

### **Formation of companies with charitable objects, etc. (Sec 8)**

#### **1. Prerequisites of obtaining a license under Section 8**

Sub-section (1) of Section 8 provides that where a person or an association of person proposed to be registered as a limited company –

- (a) has in its object the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (b) intends to apply its profit or other income in promoting its objects; and
- (c) prohibits the payment of any dividend to its members;  
such person or association of person may be allowed to be registered as a limited company without addition to its name of the word “Limited” or Private Limited by the Central government by issuing a license and by prescribing specified condition. This power of Central Government has been delegated to the Registrar vide Notification S.O. 1353 (E) dated 21st May, 2014. After obtaining such license, such person or association proposed to be registered under the Act shall make an application to the Registrar. The Registrar shall, upon application, register such person or association of person as a company after he is satisfied that all the documents are proper and in order.

The association proposed to be registered under Section 8 shall not be proposed to be an unlimited Company. However, the same may be Company limited by guarantee or a Company limited by shares. The said Company may further be listed after complying with the applicable provisions of listing as well. There is bar in the Companies Act, 2013 for the same.

It should be noted here that such Company may conduct activities which may generate profits/ surplus. The restriction placed under clause (c) is merely for the purpose of ‘payment’ of dividend to the members.

As provided under the Licence for such Companies issued in Form INC-16, Section 8 Company cannot pay or transfer, directly or indirectly by way of dividend, bonus or otherwise by way of profit, to persons who, at any time or have been, members of the company or to any one or more of them or to any persons claiming through any

one or more of them. Hence, such Companies cannot issue bonus shares as issue of bonus shares may enable a member to derive indirect benefit from the profits of the Company.

## 2. Incorporation of a new Company as Section 8 Company

Rule 19 provides for the details of obtaining the license by a proposed company. A person or an association of persons which is desirous of incorporating a company with limited liability without the addition of the word “Limited” or “Private Limited” in its name, shall make an application in Form INC – 12 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for a license under subsection (1) of section 8. It may be seen that the provisions of dropping “Limited” or “Private Limited” are an integral part of the license and the Companies may not enjoy the same as choice.

The memorandum of association of the proposed company shall be in Form No INC – 13.

The application shall be accompanied by the following documents, namely:—

- A. the draft memorandum and articles of association of the proposed company;
- B. the declaration in Form INC – 14 by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;
- C. an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure; the declaration by each of the persons making the application in Form INC – 15.

## 3. Certain privileges available to Section 8 Companies

The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies. This merely operates to reaffirm that the Section 8 Company is a Company for applicability of the provisions of the Act unless specific exemptions are provided under the Act. Further, the applicability of the provisions will also depend upon the type of company i.e. limited by shares or limited by guarantee.

It also enjoys a relaxation over the other types of Companies that a firm may be a member of such company. A question might arise whether a firm is recognised as a legal entity for

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the purpose of the Act generally or for the limited purpose of membership of association or companies licensed under Section 8. But the clear wordings of the sub-section (3) clarify that the recognition is limited only for Section 8 Companies and not beyond.

There is a specific exemption notification G.S.R. 466(E) dated 5th June, 2015 which was brought about by the Ministry. The same is reproduced in the table format below:

Section	Description
Section 2 - Company Secretary	The definition of the term 'Company Secretary' Shall not apply. <b>[section 2(24)]</b>
Section 2 - Definition of Private Company	The requirement of having minimum paid-up share capital shall not apply. <b>[section 2(68)]</b>
Section 2 - Definition of Public Company	The requirement of having minimum paid-up share capital shall not apply. <b>[section 2(71)]</b>
Section 96 - Annual General Meeting	The requirement of holding the annual general meeting during business hours between 9 am. and 6 p.m. on day that is not a national holiday and at the registered office of the company or at some other place within the city, town or village in which the registered office is company situate shall not apply where the Time, date and place of each annual general meeting are decided upon beforehand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting. <b>[section 96 (2)]</b>
Section 101 - Notice of meeting	Section 8 Company may call a general meeting of a company by giving fourteen days' notice instead of twenty one days' notice. <b>[section 101(1)]</b>
Section 118 - Minutes of proceedings of general Meeting, meeting of Board of Directors and	The section shall not apply as a whole except that minutes may be recorded within thirty days of the conclusion of every meeting in case of companies where the articles of association provide for

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<p>other meeting and resolutions passed by postal ballot.</p>	<p>confirmation of minutes by circulation.</p>
<p>Section 136 - Right of member to copies of audited Financial statement</p>	<p>Shall send a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required</p> <p>by law to be annexed or attached to the financial statements, to every member of the company, to every trustee for the debentureholder of any</p> <p>debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than fourteen days instead of twenty one days before the date of the meeting. <b>[section 136 (1)]</b></p>
<p>Section 149 - Company to have Board of Directors</p>	<p>The provisions related to minimum &amp; maximum number of directors on the Board along with requirement of special resolution to increase the limit of maximum number of directors shall not apply [section 149(1) &amp; 1st proviso to sub-section (1)]</p>
<p>Section 149 - Company to have Board of Directors</p>	<p>The provisions related to mandatory appointment of independent directors in listed company and other prescribed classes of public companies and consequently all provisions related to independent directors under the section shall not apply.</p> <p>[Section 149 (4), (5), (6), (7), (8), (9), (10), (11), (12 {i}) and (13)]</p>
<p>Section 150 - Manner of selection of Independent directors and Maintenance of databank of independent directors</p>	<p>Shall not apply.</p>

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Section 152 - Appointment of Directors	The provisions related to obtaining consent to act as director, filing of said consent with Registrar and providing a statement in the explanatory statement with respect to the appointment of independent directors shall not apply <b>[section 152 (5)]</b>
Section 160 - Right of persons other than retiring directors to stand for Directorship.	Shall not apply to companies whose articles provide for election of directors by ballot.
Section 165 - Number of Directorships	Section 8 company shall not be counted while calculating the maximum number of directorship of any person <b>[section 165(1)]</b>
Section 173 - Meetings of Board	The Board of Directors, of such Companies shall hold at least one meeting within every six calendar months. <b>[section 173(1)]</b>
Section 174 - Quorum for meetings of Board	The quorum shall be either eight members or twenty five per cent, of its total strength whichever is less provided that the quorum shall not be less than two members” <b>[section 174(1)]</b>
Section 177 - Audit Committee	Audit committee can be formed without having independent directors as majority of its members. <b>[section 177(2)]</b>
Section 178 - Nomination And Remuneration Committee and Stakeholders Relationship Committee	Shall not apply.
Section 179 - Powers of Board.	Matters referred borrowing money, to invest funds of the company and to grant loans or give guarantee or provide security in respect of the loan may be decided by the Board by circulation instead of at a meeting. <b>[Section 179 (3) (d), (e) &amp; (f)]</b>
Section 184 - Disclosure of interest by director.	The provisions related to disclosure of interest in contracts or arrangements entered into under sub-section (2) of section 184 including restriction on participation in such meeting by the interested director shall apply only if the

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	transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees. <b>[section 184(2)]</b>
Section 189 - Register of contracts or Arrangements in which directors are interested.	The provisions shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds Rs. 1 lakh.

There are certain other provisions (other than the provisions covered above) which contain specific reference to Section 8 Companies. They are specified as follows:

Section/ Rules	Description
Section 248- Power of Registrar to remove name of Company from register of Companies	Sub-section (3) provides that sub-section (2) which seeks to provide for voluntary application by Company for removal of name is not applicable for a Section 8 Company.
Rule 3 (5) of the Companies (Incorporation) Rules, 2014	A One Person Company cannot be incorporated or converted into a Section 8 Company.
Rule 7 (1) of the Companies (Incorporation) Rules, 2014	A private Company other than Section 8 Company can be converted into a One Person Company.
Rule 8 (2) (b) (vi) of the Companies (Incorporation) Rules, 2014	A name containing the phrase 'electoral trust' may be allowed to a Company proposed to be formed as Section 8 Company.
Rule 8 (7) of the Companies (Incorporation) Rules, 2014	The name of the Section 8 shall contain the words Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral Trust and such other words.

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Section/ Rules	Description
Rule 19 of the Companies (Management and Administration) Rules, 2014	A member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.
Rule 4(2) of the Companies (Corporate Social Responsibility) Rules, 2014	Section 8 Company has been recognised as a mode of carrying out CSR activities.

#### 4. Alteration of Memorandum or Articles

A company registered under section 8 shall not alter its memorandum or articles except with the previous approval of the Central Government.

This power of approval, as far as cases of conversion into another Company are concerned, are delegated to the Regional Director vide Notification S.O. 1352 (E) dated

21st May, 2014. For all other cases, these provisions are delegated to Registrar vide Notification S.O. 1353 (E) dated 21st May, 2014.

*To be continued*

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