



All about Section 8 Company

Companies registered under Section 8 of the Companies Act, 2013 (the Act) are special to the extent that they are specifically formed with an object to promote commerce, arts, science, sports, education, research, social welfare, protection of environment or for any such similar object. Even an existing public company or a private company or trust can be converted into a Section 8 company. Recognition as a Section 8 Company requires license from the Central Government. Alteration of objects of a Section 8 company requires prior approval of the Central Government. There is a misconception that a Section 8 company is formed 'not for profit'. However, the fact is that there is no restriction for a Section 8 company to earn profit in carrying on its objects, but it cannot distribute to its shareholders the profits earned and the profits have to be re-deployed in furthering its objects.

A perusal of the scheme of the provisions of the Act, pertaining to Section 8 companies would show that such companies mainly enjoy three major benefits under the 2013 Act as follows:

- First, such companies, whether public or private need not carry in their names the words "limited" or "private limited" though they enjoy status of a company with a limited liability.
- Second, the fee structure for registration of such companies as well as filing of documents is very concessional in nature; and
- Third, such companies do enjoy certain exemptions and privileges from various provisions of the Act as granted under the Notification No. GSR 466(E) dated 05th June, 2015 and the Notification No. GSR 584(E) dated 13th June 2017 issued by the Ministry of Corporate Affairs.



Advantages of Section 8 Company

Distinct Identity

Unlike a Trust or a Society, a Section 8 company is a legal entity or a body corporate with a distinct existence apart from its directors and shareholders recognised under law. It can own properties and incur debts in its own name. The artificial juridical status of a Section 8 company provides many advantages in promoting its objects and more importantly the ownership in the company can be transferred by transfer of shares and corporate restructuring schemes can be executed for merger, demerger, acquisition etc., subject however, to the terms specified in the Act

Liability is Limited

Due to the limited liability status, the members of such a company have no liability towards company's debts because, the company and members are considered as separate persons in the eyes of the law and the company is recognised as an artificial juridical person. The members' liability at the best can only extend to any unpaid value of the shares they have taken. Even a partnership can be admitted as a member of a Section 8 company.

Tax Benefits

Section 8 company can get registered under section 80G and 12A of the Income Tax Act, 1961 subject to fulfilment of applicable conditions. Thus, a Section 8 company is eligible to receive donations similar to a Trust and apply the same in furtherance of its objects. Section 8 company also enjoys stamp duty concessions for its formation and registration of property in certain States.

Establishment of Education Institutions

Section 8 companies are permitted to start schools and colleges. In the year 2016 the Medical Council of India permitted medical colleges to be set up by companies including a Section 8 company. Education sector is one of the major sectors in which schools are predominantly owned by Section 25 companies formed under the erstwhile Companies Act, 1956 or under the Section 8 of the Act.

Exemptions enjoyed by Section 8 company under the Act

Section 8 companies enjoy certain specific privileges which are not available to other forms of companies. The major privileges provided to Section 8 company Vide Notifications dated 05th June, 2015 and 13th June, 2017, are:

- Upon incorporation a Section 8 company is required to hold its first board meeting within 6 months of incorporation instead of one month applicable to other kinds of companies.
- Any person can be appointed as Company Secretary of a Section 8 company and such person need not be a member of ICSI



- General Meetings can be convened 14 clear days' notice instead of 21 days' notice
- Section 8 company can send a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting to its members not less than 14 before the date of the meeting.
- Unless the Articles of Association of the companies otherwise provide, recording of minutes of General Meetings, Board Meeting and other resolutions is not mandatory.
- The requirement of having minimum of 3 directors in case of Public Limited Company and 2 Directors in Private Company does not apply.
- Section 8 company, if it's a public company, is exempt from appointment of independent directors.
- Section 8 company is exempt from constituting any committees of the Board like audit committee, nomination and remuneration committee etc.
- Directorship in Section 8 companies is not counted for limitation on number of directorship (not more than 20 companies)
- Board meeting in a Section 8 company can be conducted once every 6 months.
- Minimum quorum for a board meeting is one-fourth (instead of one-third for other companies) or two directors whichever is less.
- Resolutions under Section 179 of the Act relating to borrowing of monies, investing the funds of the company and providing loans or security or guarantee can be passed by circulation.
- A Director of a Section 8 company, if interested in a transaction placed before the board for discussion and approval, is required to disclose his interest in a transaction, arrangement or contract and abstain from participating in the meeting only if the value of such transaction exceeds Rs.1 Lakh.

A Section 8 company can avail the above privileges only if no default is committed in filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar of Companies.

Section 8 company and Corporate Social Responsibility (CSR)

A Section 8 company can be a preferred vehicle for achieving CSR objectives. The Companies (Corporate Social Responsibility Policy) Rules, 2014 (the Rules) provide that inter alia Section 8 companies with an established track record of three years of handing



CSR projects are recognised as eligible implementing agencies through which CSR applicable companies can achieve their CSR spend objectives. However, if a Section 8 company were to be incorporated by a company to which CSR provisions are applicable, and if such Section 8 company were to be used as implementing agency, then no such track record is required. Further, a Section 8 company is required to have registration under Section 12A and Section 80G of the Income Tax Act to be eligible for CSR implementation agency. Further such Section 8 company is required to file Form CSR-1 with MCA and obtain CSR Registration Number before it handles CSR projects on or after 01st April, 2021. The Rules also enable Section 8 company to hold assets created out of CSR contributions provided by companies for use to further CSR objects.

In the absence of any specific exemption, a Section 8 company which attract the conditions under Section 135 of the Act namely,

- (i) Net worth of rupees five hundred crore or more, or
- (ii) Turnover of rupees one thousand crore or more, or
- (iii) Net profit of rupees five crore or more

is required to spend 2% of its average net profits of preceding three financial years. While the main objects of a Section 8 company can include social welfare, it should be understood that such companies need not carry on all or any of the CSR activities specified under Schedule VII to the Act as their main objects. Further, it should also be understood that the activities conducted by Section 8 companies need not necessarily fall under the ambit of CSR objectives under Schedule VII to the Act. Hence the Act has rightly made the provisions of Section 135 applicable even to Section 8 companies which meet the aforesaid conditions. However, it is advisable to such of those Section 8 companies which act as implementing agencies for CSR to amend their main objects to reflect the CSR objectives as per Schedule VII, so that the activities they carry on as implementing agencies do not fall outside their main objects.

XXXXXXXXXXXXXXXXXXXX

| CENTRAL OFFICE | BRANCH OFFICE | BRANCH OFFICE |
|--|---|--|
| Indus Chamber No.101, Govt Arts College Road, Coimbatore – 641018. Tel No: - (0422)2302868, 4952868 Email: info@ksrandco.in Linked in: gene@ksrandco.in | Flat No.1, 26/27, Venkatesham Flat, Gopal Street, T-Nagar, Chennai – 600 017. Tel No: - (044)24337620, Email: chennai@ksrandco.in | S-311, 3 rd Floor, South Block, Manipal Centre, No.47, Dickenson Road. Bangalore – 560042, Tel No: - (080)25323232 Email: bangalore@ksrandco.in |