

# Mayank Arora & Co.

Company Secretaries

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## **ARTICLE ON SECTION 8 COMPANY**

**Section 8 Company** is a Company that is licensed under Section 8 of the Companies Act, 2013 (the Act), erstwhile known as the Section 25 Company under the Companies Act, 1956, which has the main object of promoting research, social welfare, religion, charity, commerce, art, science, sports, education, and the protection of the environment or any such other object, provided that the profits, if any, or the other income is applied for promoting only the objects of the company and also, no dividend is paid to its members in short these companies dedicate all their incomes and profits towards the furtherance of their objectives. The primary object of such Company is Charity and non-project objectives.

**Section 8 Companies** are similar to Trust or Society except for one factor that is a section 8 company register itself under Central Government's Ministry of Corporate Affairs. In contrast to, Trust or Societies which gets registered under State Government regulations. The prescribed meaning of Section 8 Company pertains to Section 8 of Companies Act, 2013, which also supports its objective. To establish a Section 8 company, one needs to acquire the license and its essential to follow the annual compliances with the Ministry of Corporate Affairs (MCA) for the smooth operation of the company.

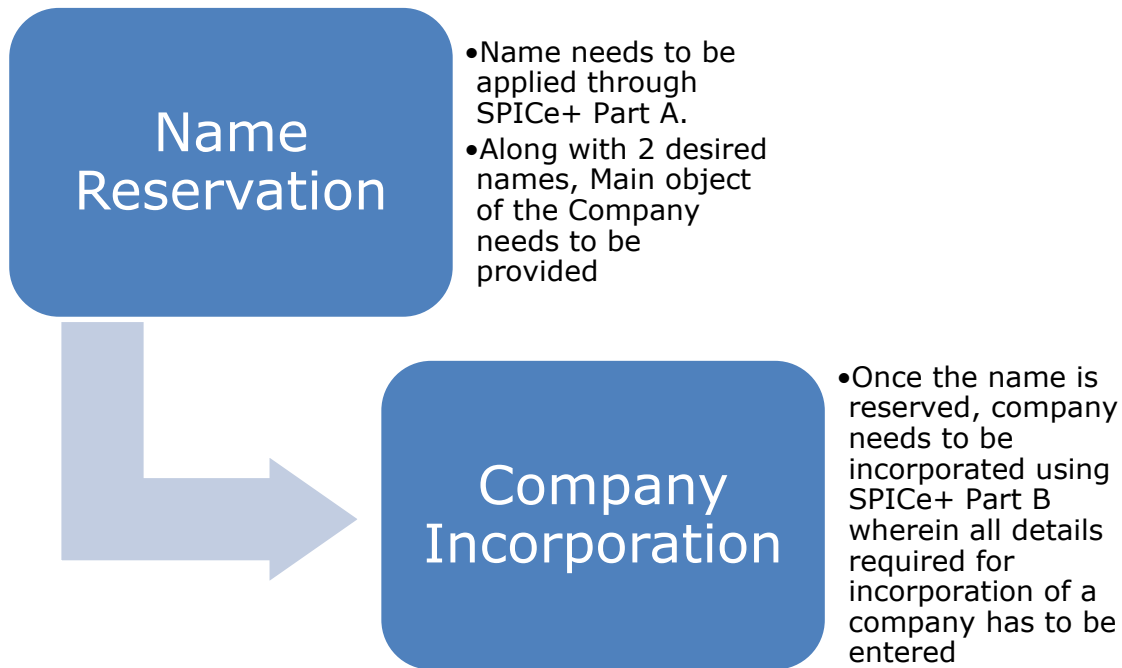
### **Characteristics of Section 8 Company:**

- It must have at least 2 shareholders.
- It must have at least 2 Directors
- The director and shareholder can be the same person
- Prohibited from paying any dividend to its members.
- Profit and other income are applied only for promoting the objects of the company.

### **Advantages of Section 8 Company:**

- Many privileges and exemptions under Company Law.
- Exemption of Stamp duty for registration.
- Registered partnership firm can be a member in its own capacity.
- Tax deductions to the donors of the Company u/s. 80G of the Income Tax Act
- It can be made without any share capital
- No need to add any suffix to its name like 'limited' or 'Private Limited'
- No restriction on transfer of shares
- Separate legal entity

## INCOPORATION PROCESS OF SECTION 8 COMPANIES



### **Mandatory Attachments of FORM SPICE +**

- Physical Memorandum of Association
- Physical Articles of Association
- Copy of ID proofs of Directors and Shareholder (PAN + Voter ID/Passport /Driving License/Aadhar Card)
- Copy of Address Proofs of Directors and Shareholder (Electricity/Telephone/ Mobile Bill/ Bank Statement)
- Consent in DIR-2 along with ID & Address proof
- Utility bill not older than 2 months as a proof of Registered Office
- No objection certificate in case registered office is not taken on lease
- Affidavit regarding deposits
- Declaration by Professionals INC-14 (on the stamp paper, duly notarized)
- Declaration by Promoters INC-15(on the stamp paper, duly notarized)
- Estimated Annual Income: 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

## CONVERSION OF SECTION 8 COMPANY INTO ANY OTHER KIND

**Section 8(4)(ii)** of the Companies Act, 2013 provides that a Company registered under Section 8 may convert itself into Company of any other Kind only after complying with such conditions as may be prescribed. **Section 8 Company cannot be converted into One Person Company.**

Requirements for the conversion of Section 8 Company into any other kind of Company as per Rule 21, 22 and 23 of the Companies (Incorporation) Rules 2014 are enumerated below:

- Section 8 Company shall pass a **Special Resolution** in the general meeting of its members for approval of such conversion.
- A certified true copy of the resolution and notice of General Meeting along with explanatory statement is required to be filed to ROC (Registrar of Companies) in **Form MGT-14 within 30 days** of passing the resolution.
- A company must intimate and obtain a **"No Objection Certificate"**, from authorities such as IT Department, Charity Commissioner, Central or State government department, Municipal body or any other recognized authority, in case it has obtained special status, privilege, benefit, exemption or grant from any of them.
- The existing Section 8 Company must file an application to the **Regional Director in Form INC 18** along with a copy to Registrar of Companies for its conversion to any other kind of Company.
- The company shall file all its Financial Statements, Annual Returns, and all such Returns as required by the Act up to the previous year of making the application to the Regional Director. In case, an application is filed and 3 months have expired from the preceding date of Financial year to which financial statement has been filed, then, a statement of financial position duly approved by the Chartered Accountant up to the date of not preceding 30 days of submitting the application needs to be attached.
- A Declaration shall be given by the Board of Directors to the effect that no part of property or income of the Company has been directly or indirectly transferred or paid by way of bonus or dividend to persons or members of the Company or claiming through any one or more of them.
- Along with the application, the Company shall also need to attach a Certificate from a Practicing CA/CS/CMA certifying that all the conditions relating to the conversion of Section 8 Company as laid down in the Act has been duly complied with.
- Within 7 days from the date of applying to the Regional Director, the applicant shall publish a notice in the newspapers at his own expense. Copy of such notices shall be sent to the Regional Director in Form INC 19 immediately after the publication of the notice.
- Simultaneously, proof of serving of notice shall be sent to the below authorities by registered post or in-hand delivery:
  - Income Tax Officer or Chief Commissioner of Income Tax having jurisdiction over the Company
  - Charity Commissioner

- Chief Secretary of the State in which the registered office of the Company is situated
  - Central or State government department in whose jurisdiction the Company is operating
- Within 60 days from the receipt of the notice, the above authorities may make representations, if any, to the Regional Director.
- Upon satisfaction, the Regional Director has the right to approve the application of conversion of Section 8 Company to any company of the other kind, subject to all prevailing terms and conditions as it may deem fit at the time of conversion.

### **Compliances after Approval**

Rule 22(10) provides that on receipt of the approval of the regional Director the Company shall convey a general Meeting to pass a Special resolution for amending the memorandum of association and article of association. The Company shall file with the registrar:

- A certified copy of the approval of the Regional Director within 30 days from the date of receipt of order in **FORM INC-20** along with fee.
- Amended MOA and AOA of the Company
- A declaration by the Director that the conditions, if any imposed by the Regional Director have been fully complied with.

### **Certificate of Incorporation**

On receipt of the required documents the Registrar shall register the documents and issue the certification of incorporation. Where the license granted to a Company registered under Section 8 has been revoked, the Company shall apply to the Registrar in FORM INC-20 along with fee to convert its status and change of name accordingly.

## **REVOCAION OF LICENSE**

As per the Rule 8(6) the Companies (Incorporation) Rules, 2014 the Central Government may revoke the license of the company if the company breaches any of the requirements of this section or violates any of the conditions or any activity of the company which are conducted fraudulently or are in contrast to public interest.

Without prejudice, the Central Government can direct the company to convert its status to Private or Public Company and change its name by adding the suffix 'Limited' or 'Private Limited' and there upon the Registrar shall register the company accordingly. The Central Government may direct such company to be wound up or amalgamated with another company that is registered under this section. But such orders can only be given after the company has been given a reasonable chance to be heard. And then a copy of the order is given to the Registrar.

## **CLOSURE/ WINDING UP OF SECTION 8 COMPANY**

Companies registered under Section 8 can close their company by surrendering their license to operate as a charitable company. Such license can be surrendered by converting the company into a normal company other than a Section 8 company. Section 8 company cannot be converted to One Person Company.

Contribution by Kajal Jain

### **Mayank Arora & Co.**

#### **Company Secretaries**

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COMPANY SECRETARIES

Date: 7<sup>th</sup> July 2020