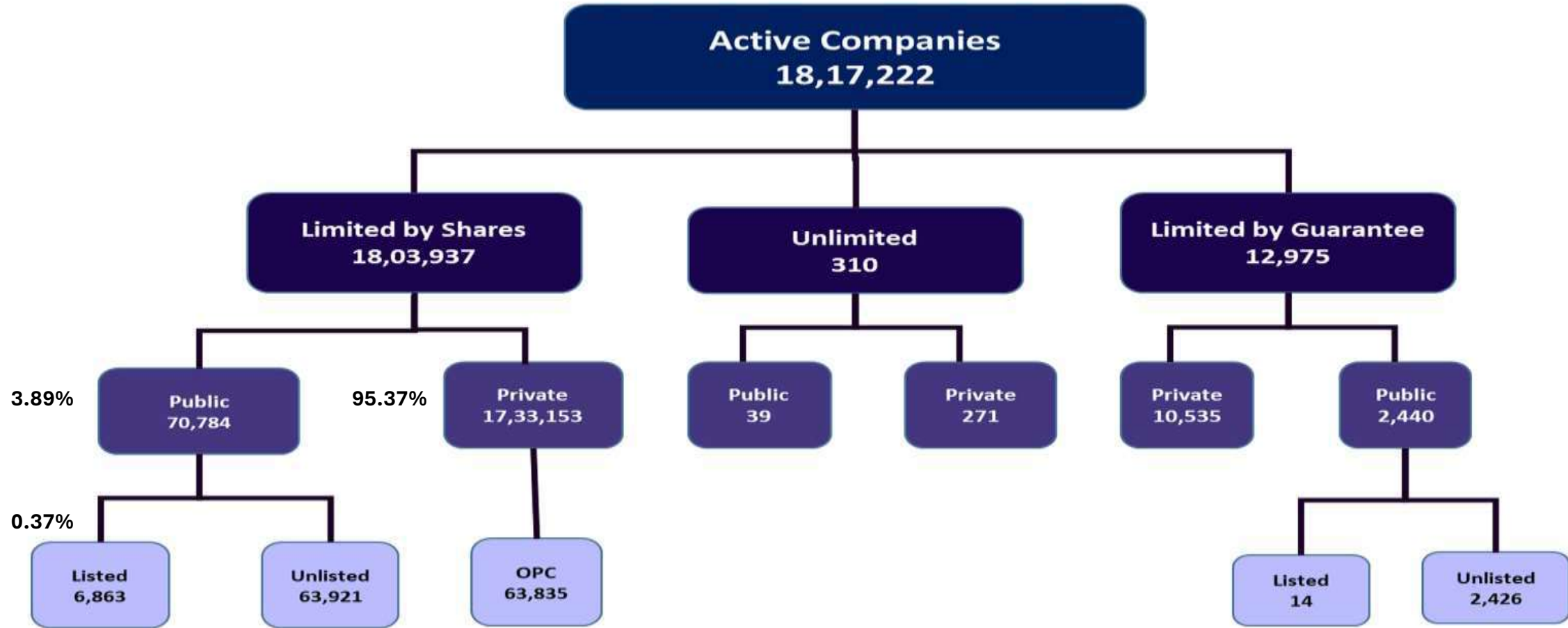

Compliance for Private Limited Companies

CS Sandeep Parekh



Statistical Analysis of Recent Data

Distribution of Active Companies as on 31st January, 2025



Source: MCA Monthly Bulletin on Corporate Sector (<https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/monthly-information-bulletin.html>)

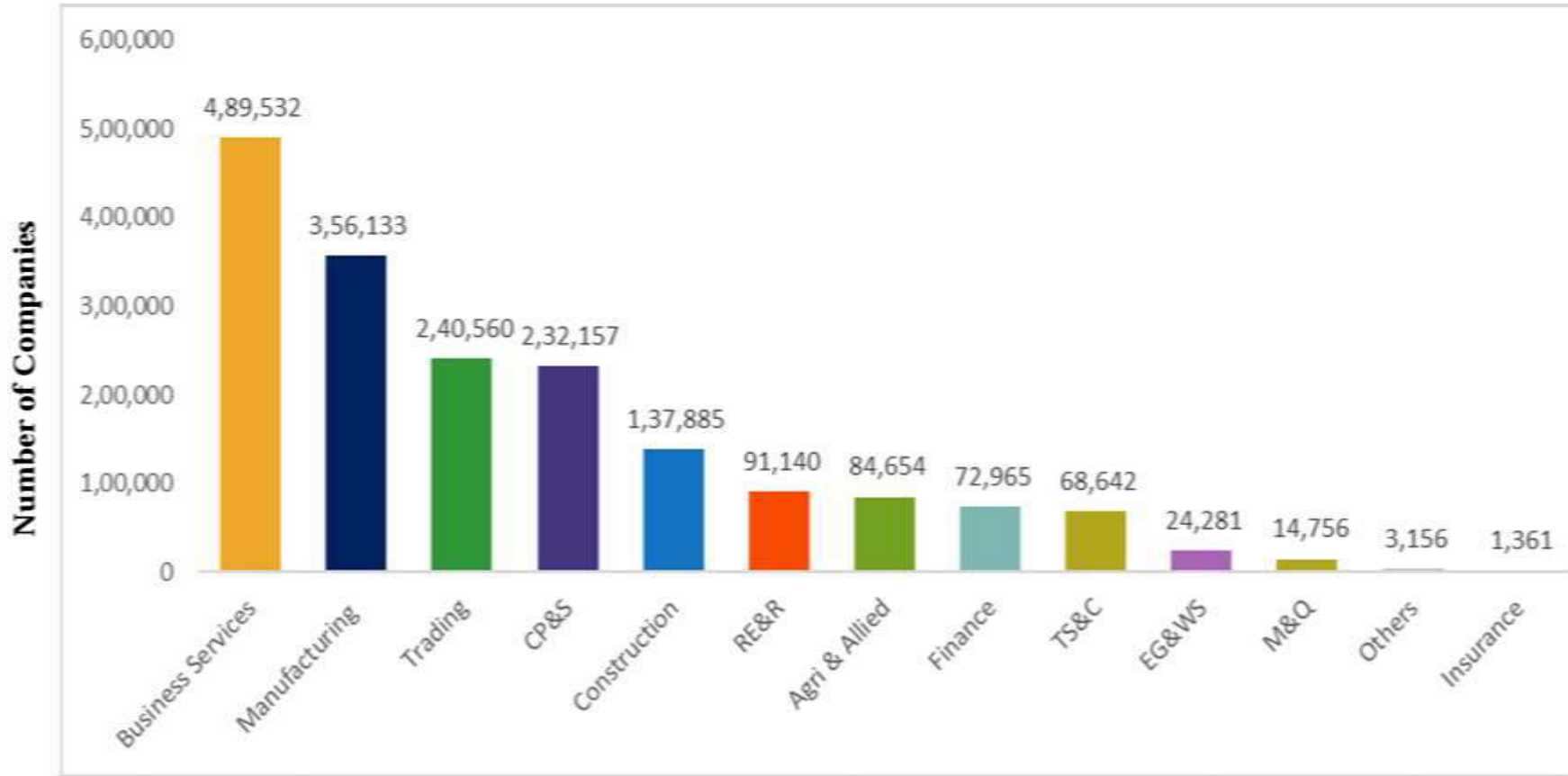
Table 1: Summary Statement on Companies in India as on 31st January, 2025

Number of Registered Companies		28,05,354
1	Number of Active companies	18,17,222
Of which		
<i>i</i>	<i>Companies Limited by Shares</i>	18,03,937
<i>ii</i>	<i>Companies Limited by Guarantee</i>	12,975
<i>iii</i>	<i>Unlimited Companies</i>	310
2	Number of Closed Companies	9,49,934
<i>i</i>	<i>No. of Companies Liquidated/Dissolved</i>	12,965
<i>ii</i>	<i>No. of Companies Defunct/ Struck-off (Section 248 of CA, 2013)</i>	8,73,898
<i>iii</i>	<i>No. of Companies Amalgamated/merged</i>	36,719
<i>iv</i>	<i>No. of Companies Converted to LLP</i>	26,351
<i>v</i>	<i>No. of Companies Converted to LLP and dissolved</i>	1
3	Number of Companies lying dormant u/s 455 of Companies Act, 2013	2,526
4	Number of Companies under Liquidation	10,425
5	Number of Companies which are under the process of striking off u/s 248 of Companies Act 2013 and u/s 560 of Companies Act 1956	25,241

Table 2: Active Companies as on 31st January, 2025

S. No.	Particulars	Government	Non-Government	Total
1	Companies Limited by Shares	2,357	18,01,580	18,03,937
a	Public Limited	1,648	69,136	70,784
<i>i</i>	<i>Listed</i>	82	6,781	6,863
<i>ii</i>	<i>Unlisted</i>	1,566	62,355	63,921
b	Private Limited	709	17,32,444	17,33,153
	<i>One Person Company</i>		63,835	63,835
2	Companies Limited by Guarantee	45	12,930	12,975
a	Public Limited	10	2,430	2,440
<i>i</i>	<i>Listed</i>	1	13	14
<i>ii</i>	<i>Unlisted</i>	9	2,417	2,426
b	Private Limited	35	10,500	10,535
3	Companies with Unlimited Liability	4	306	310
Total		2,406	18,14,816	18,17,222

Economic Activity-wise Distribution of Active Companies as on 31st January, 2025



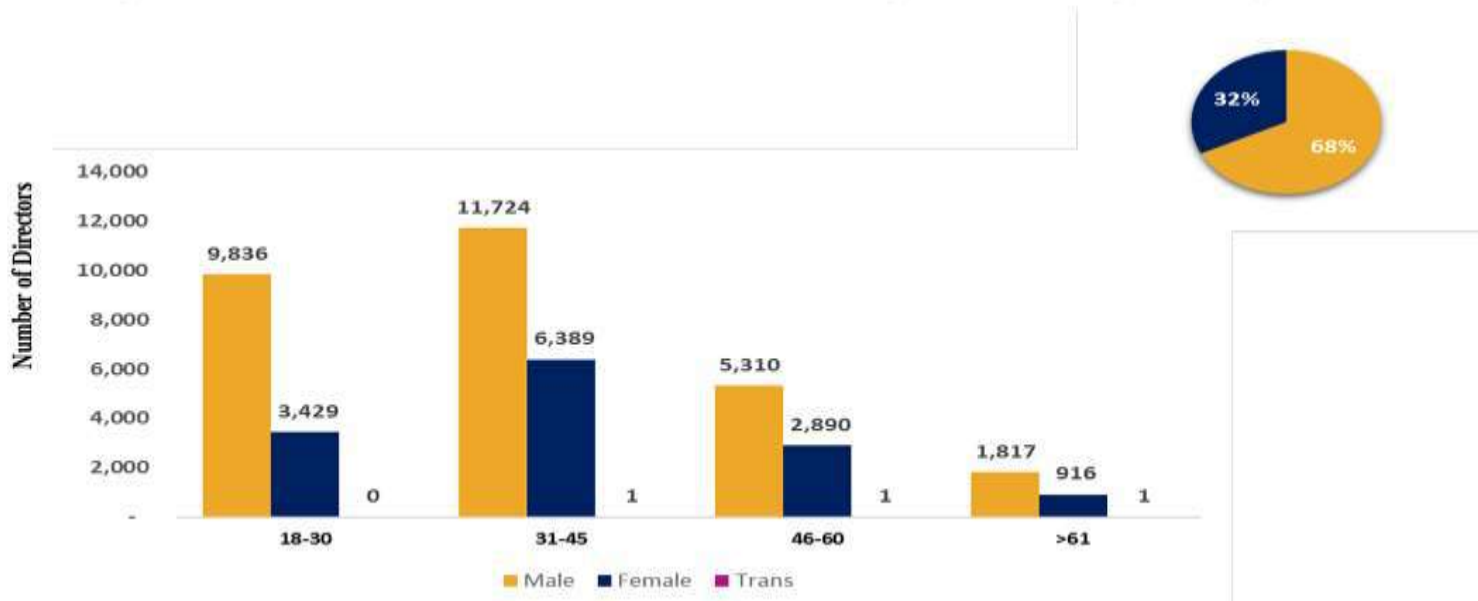
*CP&S - Community, Personal and Social Services, *Agri& Allied - Agriculture and Allied Activities, *RE&R - Real Estate and Renting,
*TS&C - Transport, Storage and Communications, *EG&WS - Electricity, Gas and Water Supply Companies, *M&Q - Mining and Quarrying

Amongst the 37 States / UT, **Maharashtra 346,555 (19%) continues to be the state with the highest number of Active Companies**, followed by Delhi (14%), and Uttar Pradesh and West Bengal (8%). **An increase in the number of Active Companies is witnessed in the states of Maharashtra, Uttar Pradesh and Delhi** as compared to December 2024. Among the Union territories, Jammu and Kashmir showed a rise of 112 number of companies in contrast to December 2024

New Registration of Director Identification Number (DIN)

In January 2025, 42,314 Director Identification Numbers were registered, out of the total number of directors registered in India in January 2025, 68% were male and the remaining 32% were female. A close analysis on Indian Directors revealed that 43% of new directors registered belongs to age 31-45 years old. Furthermore, 6% of the new director registrations were older than 60 years.

Age/Gender wise Distribution of New Directors registered during January 2025



Around 43000 new Directors PER Month joining Corporate India!!

No Wonders why OTPs & KYC is not happening....!!!

Introduction to Private Limited Companies



Advantages of Private Limited Companies

Limited Liability

Private limited companies protect shareholders by limiting their liability to the amount they invested, reducing personal financial risk.

Ease of Raising Funds

These companies can raise funds more easily through private investments and offering shares, attracting investors.

Continuity of Existence

Private limited companies benefit from continuity, allowing them to operate independently of changes in ownership or management.

Incorporation and Initial Compliance

Steps in Company Incorporation



Choosing a Company Name

The first step in incorporation is selecting a unique name that reflects the business and complies with regulations.

Obtaining Digital Signature Certificate

A Digital Signature Certificate (DSC) is required for online filing and serves as an electronic equivalent of a physical signature.

Director Identification Number

Acquiring a Director Identification Number (DIN) is essential for individuals intending to become directors of the company.

Filing Incorporation Application

The final step involves filing the incorporation application with the Registrar of Companies along with necessary documents.

Initial Registrations and Licenses



Required Registrations

Upon incorporation, businesses must complete essential registrations such as PAN and TAN to operate legally.



GST Registration

Goods and Services Tax (GST) registration is crucial for businesses to comply with tax regulations and ensure smooth operations.



Sector-Specific Licenses

Depending on the business sector, specific licenses may be required to meet regulatory standards and operate effectively. For eg: Shop & Establishment, Factory License etc

Types of Private Limited Companies

Small Pvt Co	BIG Pvt Co	JV (SHA) Pvt Co	WOS Pvt Co	Holding Pvt Co	Pvt Co which is a Subsidiary of Public Co	Pvt Co - Subsidiary of Foreign Company
<ul style="list-style-type: none"> The Company is in its initial Business days. Family Business- Driven by the family members. Self- Finance Business. Less or No External Members on the Board/ Cap-Table Paid-up capital and turnover of the small company shall not exceed Rs. 4 Cr and Rs. 40 Cr respectively. 	<ul style="list-style-type: none"> The Company is into one or more Business activities. Funded by Capital as well as Borrowing. Means of Finance could be Debenture/ Loan/ ECB etc 	<ul style="list-style-type: none"> The Company is set up by TWO or more different organizations. The constitution (MOA-AOA) is drafted to spell out Dos and Don't's The BOD is constituted formally with the power to decide certain matters are kept "RESERVED" Most of the Board Meetings are strictly formal, with the highest level of Compliance and Corporate Governance practice. 	<ul style="list-style-type: none"> Mostly seen in a Group of companies WOS is set-up to take the work that cannot be done by the parent Company (Like Contract JOBS/ Labour work Jobs) etc WOS is completely dependent on the holding Co for its finance, business, and administrative needs. 	<ul style="list-style-type: none"> Parent Company leading the business with a set-up of group Companies having one or more subsidiaries Investors' Expectations on having Formal Investor communication, holding of Board Meetings, AGM/ EGM etc Audit, Internal Audit and Company Secretarial Audit (MGT 8/otherwise) are required to meet Compliance as well as Investors' requirements. 	<ul style="list-style-type: none"> Little complicated to monitor Compliance Applicability A Public Company holds more than 51% shares, whereby several sections which are otherwise not applicable to a simple private limited company, will start attracting. Treat this as Public Company to avoid any non-Compliance. 	<ul style="list-style-type: none"> Almost entire holding is held by the Foreign Company Generally Indian person do not hold any shares The Board constituted with Foreign and Indian Directors Indian Directors are Executive Director (Employee) and will have to follow the guidance and Business Planning set by the Foreign Parent Company Eg: COST PLUS entity, upgradation of Branch Office/ establishment of Foreign Companies etc

Threshold Monitor



Sr no	Name of Compliance	Applicable sections
1	SMALL COMPANY	<p>Small Company:- 1) Paid-up capital and turnover of the small company shall not exceed Rs. 4 Cr and Rs. 40 Cr respectively.</p> <p>BIG Company:- (1) It is a Public Co. OR (2) Holding of another Co. OR (3) is a Subsidiary of another Co. OR (4) is a Section 8 Co OR (5) is governed any Special Act (like NBFC, Insurance etc)</p>
2	XBRL	<p>a) Listed (b)Subsidiaries of any Listed Co</p> <p>(c) All Co- paid up Capital of Rs. 5 Crore and above</p> <p>(d) All companies - Turnover Rs 100 Cr above</p> <p>XBRL Once applicable - Forever applicable</p>
3	INTERNAL AUDITOR	<p>a) every listed company;</p> <p>b) unlisted public company having-</p> <p>(i) Paid-up Rs. 50 cr or more in the preceding FY OR (ii) turnover Rs. 200 crore in the preceding FY OR</p> <p>(ii) outstanding loans/ borrowings from banks/ public financial Ints exceeding Rs. 100 Cr or more at any point of time during the preceding financial year; OR</p> <p>(iii) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and</p> <p>a) <u>every private company having-</u></p> <p>(i) turnover Rs. 200 crore in the preceding FY OR</p> <p>(ii) outstanding loans/ borrowings from banks/ public financial Ints exceeding Rs. 100 Cr or more at any point of time during the preceding financial year;</p>
4	MGT-8	<p>a) listed company or</p> <p>b) ANY company- paid-up capital of Rs 10 crore or more OR</p> <p>c) ANY Company Turnover of Rs 50 crore or more</p>

Sr no	Name of Compliance	Applicable sections
5	COMPANY SECRETARY	a) All listed companies OR b) All Companies with paid up capital Rs. 10 crores or more
6	SECRETARIAL AUDITOR	a) Listed Company OR b) Public company - paid-up Rs. 50 crore or more; OR c) Public company - Turnover of Rs. 250 crore or more d) ANY Company -Borrowing Rs. 100 crore
7	ID/NRC/AC Committee (Independent Director)	a) Listed Company OR b) Public Companies i) Paid up capital Rs. 10 Cr or more; or ii) turnover Rs. 100 Cr or more; or iii) Borrowing exceeding Rs. 50 crore
8	CSR	ANY Company a) having Net worth of Rs. 500 crore or more b) Turnover of Rs.1000 crore cor more c) Net profit (BEFORE TAX) of Rs. 5 crore or more
9	ROTATION OF AUDITOR	a) Public Cos - Paid up -Rs. 10 Cr or more; b) <u>Private Cos - Paid up Rs. 50 Cr or more;</u> c) All Cos - borrowings from Bank/ financial institutions or public deposits - Rs. 50 Cr or more.
10	VIGIL MECHANISM	1) Listed Company 2) the Companies which accept deposits from the public; 3) All Companies -Borrowing banks / public financial institutions in excess of Rs. 50 Cr
11	WOMEN DIRECTOR	a) every listed company; b) Public companies having – i) paid-up share capital of one hundred crore rupees or more; or ii) turnover of three hundred crore rupees or more

Sr no	Name of Compliance	Applicable sections
12	Appointment of MD, WTD, CFO (KMP) (Other than CS)	a) All listed companies b) Public Cos with a paid-up capital of Rs. 10 crores or more
13	CARO	All Companies <ul style="list-style-type: none"> with a paid-up capital of more than Rs.1 Crore. With borrowing of more than Rs.1 crore from any bank and financial institution at any point of time during the financial year. which are a subsidiary or holding company. which have a total revenue exceeding Rs.10 crore during the financial year. <u>Not applicable to</u> (a) A banking co. (b) Insurance Co. (c) Section 8 Co. (d) OPC (e) Small co
14	DEMAT	All Non-Small Companies
15	COST AUDITOR	I. Every Company specified in Table A II. If its annual turnover is during the immediately preceding FY is Rs. 50 Cr. or more and the aggregate turnover of the individual products or services for which cost records are to be maintained is Rs. 25 Cr. or more. III. Every Company specified in Table B IV. If its annual Turnover is during the immediately preceding FY is Rs. 100 Cr. Or more and the aggregate turnover of the individual products or service for which cost records are to be maintained is Rs. 35 Cr. or more
16	IND- AS	Following Company shall comply with w.e.f 01.04.2017 a) Every Co. - having networth 250 Cr or more b) Holding, Associates, Subsidiary and Joint venture of the Companies mentioned in a) above

Common Compliance Mistakes & Penal Provision



No	Type of Violation	Section	Penalty
1	Non-filing/ delay in filing - Commencement of Business (within 180 days after incorporation- with ROC)	10A	Company = Rs.50,000 every officer Rs.1000 each day but not exceeding Rs.1L ROC may strike off the name.
2	Letterhead, Name Board etc (Name, CIN, address, Phone, email id and website if any)	12	Company – Rs.1000 each day every officer Rs.1000 each day
3	Old copy of MOA & AOA (without latest alteration)	15	Company – Rs.1000 each copy every officer Rs.1000 each copy
4	Issue of Shares on Private Placement/ Preferential allotment without opening separate Bank A/c	42	Company – amount raised or 2 Cr (low) Promoter - amount raised or 2 Cr (low) every officer- amount raised or 2 Cr (low) AND Company to return the money with Interest within 30 days
5	Issue of Share Certificates/ Payment of Stamp Duty	56	Company – Rs.50,000 every officer Rs. 50,000
6	Conversion of LOAN into EQUITY (No special resolution passed BEFORE LOAN)	62(3)	<u>Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in a general meeting.</u>
7	Acceptance of Loan (Deposit) from a person other than permitted.	73	Various penalty mentioned under Act & Rules

No	Type of Violation	Section	Penalty
8	Maintaining Register of Members	88	Company – Rs.300,000 every officer Rs. 50,000
9	Declaration of SBO	90	Company – Rs.50,000 + 1000 each day every officer Rs. 50,000 + 1000 each day
10	Filing of Annual Return within 60 days of AGM (<i>Paying additional Fees is not an escape</i>)	92(5)	If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand and in case of continuing failure, with a further penalty of one hundred rupees for each day subject to a maximum of 2 lacs for company and Rs. 50,000 for an officer who is in default.
11	In-complete verification /Certification of Annual Return – which is not correct/ complete as per Section 92	92(6)	If PCS certifies the annual return <u>otherwise than in conformity with the requirements of this section</u> or the rules made thereunder, <u>he shall be liable to a penalty of two lakh rupees</u>
12	Filing of MGT 14 (within 30 days only payment of additional fees is <i>not an escape</i>)	117	Company – Rs.10,000 + 1000 each day every officer Rs. 10,000 + 1000 each day

No	Type of Violation	Section	Penalty
13	Non-Maintenance of Minutes	118	Company – Rs.25,000 every officer Rs. 5,000
14	Non Maintenance of Books of Accounts at Regd Office	128	Company – Rs.50,000 to Rs.500,000 CFO – Rs.50,000 to Rs.500,000 every officer – Rs.50,000 to Rs.500,000
15	Preparation of the Financial Statement (including CFS) in Schedule III format along with Notes to Accounts	129	CFO – imprisonment up to 1 year or Rs. 5L or BOTH MD - imprisonment up to 1 year or Rs. 5L or BOTH WTD - imprisonment up to 1 year or Rs. 5L or BOTH Every Officer- imprisonment up to 1 year or Rs. 5L or BOTH
16	CSR – Calculation CSR – Spending – background check of NGO etc <i>(responsibility is on the Board to ensure utilization)</i> CSR – Reporting (in Board Report/ CSR 2) CSR Policy & website Compliance etc	135	Company – twice the amount of CSR liability or Rs. 1 Crore (less) every officer 10 % of CSR liability or Rs 2 lacs (less)
17	Appointment of Internal Auditor within 6 months from the date of event (Listed; Public-PU-50cr; Any Company- TO-200cr; BO-100cr at any point of time during preceeding financial year	138	General Penalty

No	Type of Violation	Section	Penalty
18	<u>Board Meetings</u> <ul style="list-style-type: none"> • Gap between 2 BM • Non-maintenance of VC recordings • Whatsapp Board Meetings! 	173	General Penalty
19	Powers of the Board of Directors <ul style="list-style-type: none"> • Borrowing – no resolution passed • Investment - no resolution passed • Granting of Loan/ Guarantee/ Security - no resolution passed – No CHG 1 filed 	179	Various Penalty
20	Restrictions on Powers of Board Failure to pass (and file MGT 14) Special Resolution for the following matters: <ul style="list-style-type: none"> a) Sell/ Lease a substantial undertaking (20% of more Co's asset/Investment) a) Borrowing money exceeding Paid-up + Free Reserve + Securities Premium 	180	

No	Type of Violation	Section
21	<p>This section does not apply to Private Companies, GSR 464 (E) dated 05.06.2015.</p> <p>(The exceptions, modifications and adaptations provided above <u>shall be applicable only to those Private Companies which has not committed a default in filing its financial statements under Section 137</u> of the said act <u>or annual return under Section 92</u> of the said act with the registrar, vide notification dated 13th June 2017)</p> <p><u>The Delay in filing AOC 4 & MGT 7 is considered as DEFAULT in various matters such as:</u></p> <ul style="list-style-type: none"> a) M/s. S.K. Ghosh & Co. v. Registrar of Companies (2015) b) C.A. Jafar (Appellant) v. Registrar of Companies (2017) c) Shree Dattaguru Traders Ltd. v. Registrar of Companies (2017) d) M/s. Green Ply Industries Ltd V NCLT (2018) <p>Therefore, please consider Section 180 applicable to Private Limited Companies, since generally, Private Limited Companies delay their Annual Filing due to delayed receipt of Financials from the Auditors.</p>	180

No	Type of Violation	Section	Penalty
22	Loan to Director <ul style="list-style-type: none"> • Loan given to Director – not permitted • Give a guarantee for the borrowing by a firm in which the director/ his relative is a partner (LLP?) • Loan to any person in whom the Director is Interested by passing a special resolution 	185	Company – 5L to 25L Every Officer: Imprisonment 6m or 5L to 25L Director/ Person to whom loan is given (the beneficiaries) - Imprisonment 6m or 5L to 25L
23	Investment BEYOND 2 layers ABC Pvt Ltd → XYZ1 Pvt Ltd → PQR2 Pvt Ltd == OK ABC P Ltd → XYZ 1 P Ltd → PQR2 Pvt Ltd → ZZZ3 P Ltd = NOT OK	186(1)	Company – 25 K to 5L Every Officer: Imprisonment 2 Years AND fine 25K to 1L This is Non Compoundable Offence
24	<ul style="list-style-type: none"> • Giving Loan • Giving Guarantee / Providing Security • Investment Exceeding 60% of Paid-up + F.Reserve+ Sec Prem OR 100 % of F. Reserve + Sec Prem – whichever more - - without passing SPECIAL Resolution Check this limit everytime..	186(2)	
25	Non Disclosure in the financial statement about full particulars of the loans given, investment made or guarantee given or security provided <u>and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.</u>	186(4)	
26	Charging of NO or Less Interest on the Loan given	186(7)	

No	Type of Violation	Section
27	Appointment of MD BEYOND 5 years (MD once appointed – will continue till life!)	196
28	Non-Appointmentt KMP • MD, CEO, CS, CFO (Non Appointment of Company Secretary in many Co)	203
	MCA Annual Report data shows that during FY 2023-2024 around 1250 Companies were registered with an Authorised Capital more than 10 Crore. (This is just for FY 2023-2024)	

Table 3.6
Authorized Capital-wise Distribution of Companies Registered during
Financial Year 2023-24

(₹ in crore)

Authorized Capital Range (₹)	Private		Public		Total	
	Number	Authorized Capital	Number	Authorized Capital	Number	Authorized Capital
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Up to 1 lakh	6,634	13.37	56	0.01	6,690	13.38
1 - 5 lakhs	76,674	826.70	176	1.83	76,850	828.53
5 - 10 lakhs	14,135	721.90	146	7.48	14,281	729.38
10 - 25 lakhs	79,244	9,593.18	1,458	187.70	80,702	9,780.88
25 - 50 lakhs	1,449	419.46	97	26.20	1,546	445.66
50 lakhs - 1 crore	1,424	780.58	34	18.10	1,458	798.68
1 - 2 crores	1,528	1,656.98	57	60.33	1,585	1,717.31
2 - 5 crores	905	2,399.84	46	124.12	951	2,523.96
5 - 10 crores	525	3,137.99	37	211.90	562	3,349.89
10 - 25 crores	331	4,145.46	75	1,057.81	406	5,203.27
25 - 100 crores	155	6,977.77	27	1,036.57	182	8,014.34
100 - 500 crores	55	8,840.02	19	3,168.10	74	12,008.12
500 - 1000 crores	7	4,361.76	1	700.00	8	5,061.76
Above 1000 crores	7	19,200.00	10	41,500.00	17	60,700.00
Total	1,83,073	63,075.01	2,239	48,100.15	1,85,312	1,11,175.16

Consequences of Non- Compliance



1) Late filing penalties can range from Rs. 100 to Rs. 500 per day, increasing significantly for continued non-compliance.

2) Director Disqualification

3) Fines and Imprisonment - Fines can range from 1 lakh to 10 lakh, with imprisonment possible for certain offenses.

Certain violation are Non-Compoundable, which the Company's Management may not be even aware !

1) Strike-Off and Inactive Status: Losing Your Company's Place

Reputational Damage

The Hidden Cost

1

Trust Erosion

Non-compliance can damage a company's reputation, eroding trust with stakeholders.

2

Negative Publicity

Media coverage of non-compliance can lead to negative publicity and brand damage.

Every MCA Penalty order is posted on MCA website, which is public domain.

3

Business Impact

Reputational damage can affect business relationships, investor confidence, and customer loyalty.



Fines and Imprisonment

In 2024, the Ministry of Corporate Affairs (MCA) intensified its enforcement actions against corporate non-compliance. Between April and June 2024, **RoC issued 321 compliance violation orders** under the Companies Act, **marking a 25% increase from the previous quarter**

These orders addressed various corporate offences, including:

- Non-filing of financial statements and annual returns on time
- Absence of independent directors
- Failure to report significant beneficial owners
- Extending loans and advances without board approval
- Not maintaining registered offices
- Failure to report board resolutions on time
- Violations of related party transaction rules

The RoCs have expanded their range of compliance monitoring, leading to a nearly five-fold increase in enforcement orders over the past four years

In 2024, the Ministry of Corporate Affairs (MCA) took significant enforcement actions against companies and individuals for violations of the Companies Act, 2013. Notable instances include:

•**LinkedIn India and Executives:** In May 2024, the MCA imposed fines totaling 27.1 lakh on LinkedIn India, its CEO Satya Nadella, and eight other individuals for failing to comply with significant beneficial ownership (SBO) norms under the Companies Act, 2013. [Business Standard](#)

•**Reliance Broadcast Network Limited:** In the financial year 2021-22, the company was fined 6,10,500 for non-compliance with Section 149 of the Companies Act, 2013, which mandates the appointment of at least one woman director on the board of certain companies. [Sansad](#)

•**Great Western Industries Limited:** Also in the financial year 2021-22, this company was fined 1,59,000 for similar non-compliance with Section 149.

Compliance for Section 8 Companies Under the Companies Act 2013

Charity begins at Home!

*Understanding Compliance for **Non-
Profit Organizations***



Statistical Analysis of Recent Data

CSR Expenditure : Summary

Source: National CSR Portal- www.csr.gov.in

FY 2022-23

FY 2021-22

FY 2020-21

FY 2019-20

FY 2018-19

Comparative

29986.92

FY 2022-23
Total Amount Spent (INR Cr.)

26579.78

FY 2021-22
Total Amount Spent (INR Cr.)

26210.95

FY 2020-21
Total Amount Spent (INR Cr.)

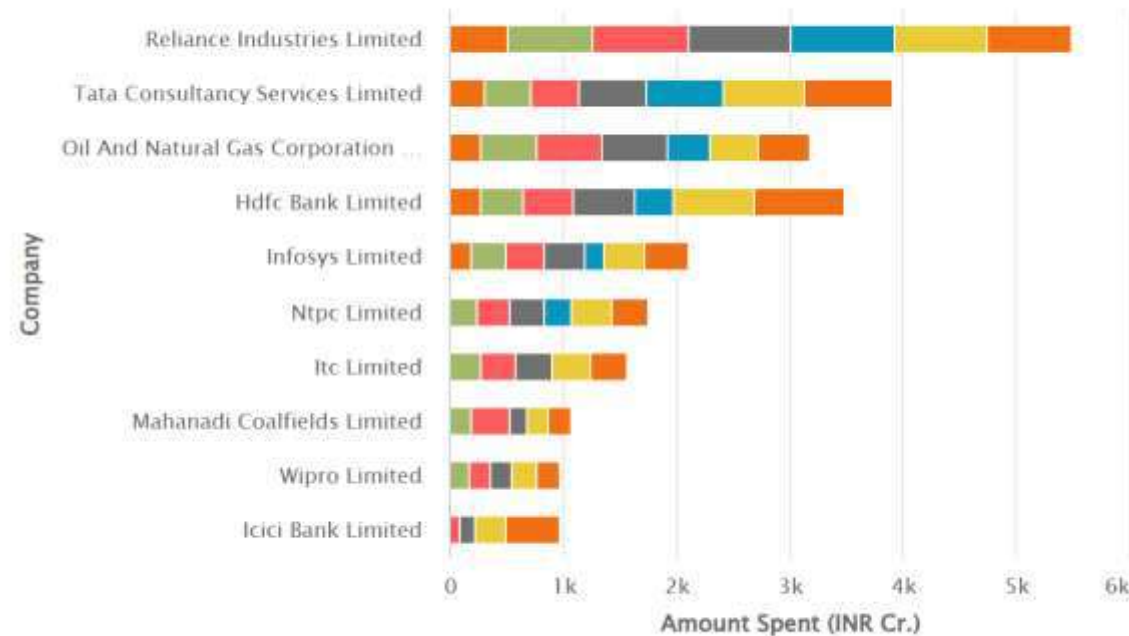
24965.82

FY 2019-20
Total Amount Spent (INR Cr.)

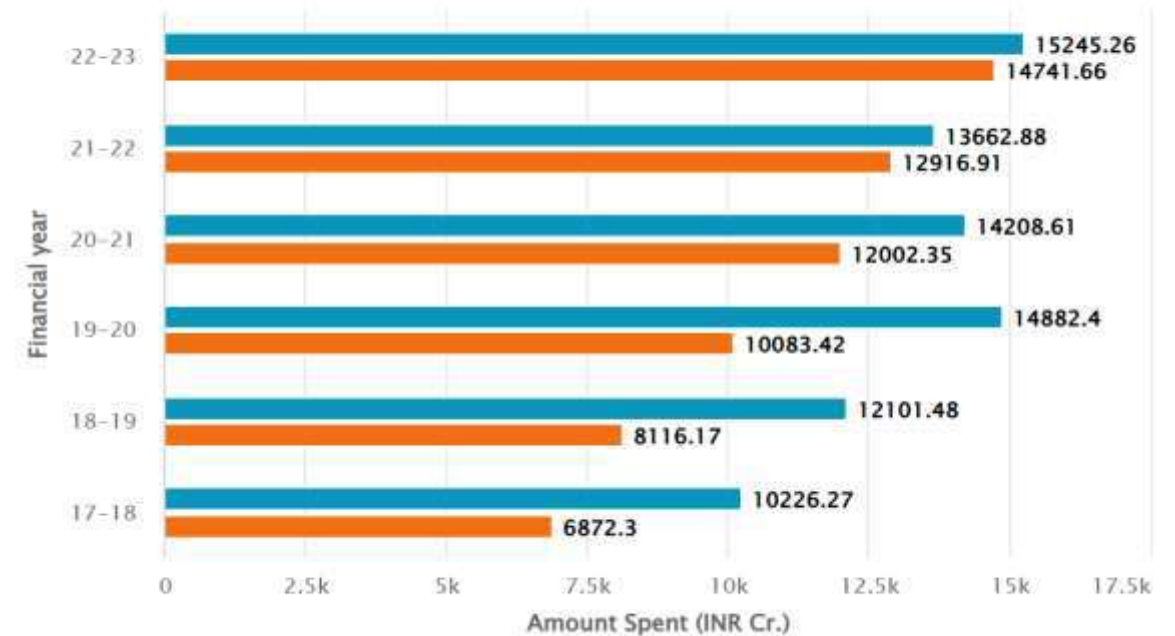
20217.65

FY 2018-19
Total Amount Spent (INR Cr.)

CSR Spent: Top 10 Companies



CSR Spent: Listed vs. Unlisted Companies



16-17 17-18 18-19 19-20 20-21 21-22 22-23

Listed Unlisted

As of February 2025, the NGO Darpan portal reports a total of **317,865** active NGOs registered.

Source: <https://ngodarpan.gov.in>

NGO Darpan is an initiative by NITI Aayog, Government of India, designed to create a centralized repository of information about Non-Governmental Organizations (NGOs) and Voluntary Organizations (VOs) across the country. This platform enables NGOs to obtain a Unique Identity Number (UIN), which is mandatory for applying for grants from various government ministries and departments.

Reason of sudden Spike in Section 8 Companies

- Corporate India is spending approx. approx. 30,000 Crore towards CSR expenditure every year
- CSR can be spent directly OR through the NGO.
- With the Introduction & Rise of the Social Stock Exchange, **SECTION 8/ NGO Companies are now TALK OF THE TOWN!**

Introduction to Section 8 Companies

Definition and Purpose of Section 8 Companies



Non-Profit Organizations

Section 8 companies are established as non-profit organizations focused on promoting social causes and community welfare.

Promotion of Social Causes

The primary goal of Section 8 companies is to advance charitable activities that benefit society and address social issues.

No Profit Distribution

Unlike traditional companies, Section 8 companies do not distribute profits. Any surplus is reinvested into their social objectives.



Eligibility Criteria and Objectives

Eligibility Requirements

To register as a Section 8 company, specific eligibility criteria must be fulfilled, focusing on social welfare.

Objectives of Registration

The objectives of a Section 8 company should emphasize altruism and aim to promote social welfare without profit motives.

Legal Framework and Registration Process



Key Provisions of the Companies Act 2013

Regulations for Section 8 Companies

The Companies Act 2013 specifically outlines regulations for Section 8 companies, which are non-profit organizations.

Formation of Companies

Understanding the formation process under the Companies Act is crucial for compliance and effective management of the company.

Management and Compliance

The Act emphasizes the importance of management structures and compliance requirements to ensure lawful operation of companies.

Step-by-Step Registration Process



Name Approval

The first step in the registration process is obtaining name approval from the relevant authorities to ensure the chosen name is unique.



Drafting Documentation

Next, you must draft the Memorandum and Articles of Association, which outline the company's structure and governance.



Submitting Forms

Finally, submit the required forms and documentation to the Registrar of Companies to complete the registration process.

Required Documentation and Approvals



Identity Proofs

Identity proofs are essential for verifying the identity of directors when registering a Section 8 company.

Address Proofs

Address proofs are required for confirming the residential addresses of the directors during the registration process.

Declaration of Compliance

A declaration of compliance is needed to ensure that all registration requirements are met according to the law.

Importance of Approvals

Proper approvals are crucial to complete the registration successfully and operate as a Section 8 company.

Type of Section 8 Companies

There are mainly two types of Section 8 companies in India based on their objectives and scope:

1. Charitable Section 8 Companies

These are **formed to promote charitable activities like health care, education, poverty alleviation, animal welfare**, disaster relief, and similar welfare activities.

2. Non-Profit Section 8 Companies:

These companies are set up for **non-profit purposes**, including social welfare, scientific research, or the promotion of art, culture, or sports. While they may engage in activities like running cultural events, educational programs, or skill development initiatives, they are not driven by profit motives. Any **surplus generated is used for furthering their non-profit objectives**.

Key Features of Section 8 Companies:

- **No Distribution of Profit:** Profits are not distributed among members, and all earnings are reinvested into the company's mission.
- **Minimum Members:** At least two members are required to incorporate a Section 8 company. (7 in case of public)
- **Regulated by Central Government:** These companies must apply for and obtain a license from the ROC to operate under Section 8.
- **Tax Exemption:** Section 8 companies are eligible for tax exemptions under **Section 80G** and **12A** of the Income Tax Act, provided they meet certain conditions.

These types of companies play a crucial role in social development and welfare activities in India.

Type of Section 8 Companies

Company Limited by Shares

- A group of people generally for the promotion of Social cause, Promotion & mutual benefits of Trade activities will constitute Section 8 Company Limited by Shares.
- The purpose is to create UNITED COMMUNITY GROUP to achieve common mutual goals
- The company may generate profits which are deployed back into the Company.
- Every Member has to subscribe to Shares of the Company to become a member.
- A person from the same Business Community would subscribe to the shares. (for Eg; ABC Fresh Fruits Importer Organisation will have all Fruits Importers likewise..)
- The Company can be structured as Private or Public, depending on the total no of members expected to join the organization.

Company Limited by Gurantee

- A group of people for the promotion of Charitable activities will constitute Section 8 Company limited by Guarantee.
- The purpose is to create, Control and regulate a Common Asset/ Facility/ Privilege
- The company collect Fees from its Members to operate the Company, hence chances of generating profits is minimum and even its generated, will be deployed back into the Company.
- Every Member has to pay the yearly Membership Fees to become a member.
- Like Minded people generally joins the Company. (for Eg; Bombay Gymkhana is a morethan 100 years old Section 8 Company limited by Gaurantee.)
- The Company can be structured as Private or Public, depending on the total no of members expected to join the organization.

Common Challenges



1. Financial Sustainability:

They often struggle with raising sufficient funds to support their activities. The reliance on donations, grants, and government funding can make it difficult to maintain financial sustainability, especially in a fluctuating economy.

2. Compliance and Regulatory Burdens:

These companies are required to comply with a wide range of legal and regulatory requirements under the **Companies Act, 2013, Income Tax Act, 1961, FCRA etc.** This includes filing regular returns, maintaining accounts, and fulfilling other statutory obligations, which can be burdensome, especially for small non-profits with limited administrative resources.

3. Lack of Professional Management:

Many Section 8 companies are run by volunteers or people with limited experience in business or management. This can lead to inefficiencies in operations, lack of strategic planning, and difficulties in scaling the organization.



4. Awareness and Visibility:

Some Section 8 companies struggle with gaining visibility and reaching out to potential donors, volunteers, or collaborators.

5. Government Dependency:

Many Section 8 companies rely on government support for their programs and projects. Political and policy changes can lead to a loss of such funding or support, creating instability for the organization.

6. Human Resource Challenges:

Non-profits often face difficulties in attracting and retaining qualified staff or volunteers, especially if they cannot offer competitive salaries or long-term job security. This can impact the delivery of programs and services.

7. Impact Measurement:

Demonstrating the impact of their activities can be difficult. Section 8 companies often struggle to quantify and communicate the outcomes of their projects, which is important for both funding and credibility.

8. Difficulty in Scaling:

Section 8 companies may find it challenging to scale their operations due to financial and managerial limitations. Limited funding, a lack of business acumen, and difficulty in attracting skilled staff can hinder growth.

Constitutional Documents Challenge & Care

- a) Utmost Care has to be taken while drafting of AOA, especially of Company Limited by Guarantee
- b) Position like President, Vice President, Treasurer, Secretary etc are the office bearers
- c) Qualification criteria of Office Bearer, Term of Appointment, Election Process, Election Officer etc should be mentioned very clearly.
- d) Non Clarity will create Chaos



Annual Filing and Returns

Section 8 Company Compliance

Section 8 companies must adhere to specific compliance requirements, including filing annual returns and financial statements.

Filing Requirements

Timely filing of annual returns and financial statements is essential to maintain good standing with the Registrar of Companies.

Avoiding Penalties

Failure to comply with filing requirements can lead to penalties, making adherence critical for Section 8 companies.



Maintenance of Statutory Registers and Records

Compliance Requirement

Maintaining statutory registers and records is a crucial compliance requirement for Section 8 companies.

Registers for Members and Directors

Companies must maintain registers for members, directors, and their details to ensure proper governance.

Minutes of Board Meetings

Recording minutes of board meetings is essential for accountability and transparency in decision-making.



Board Meetings and Resolutions

Importance of Board Meetings

Regular board meetings play a critical role in the governance of Section 8 companies, ensuring effective oversight and decision-making.

Passing Resolutions

Passing resolutions during meetings is essential for formalizing decisions and actions taken by the board, promoting accountability.

Documentation and Compliance

Proper documentation of board meetings is necessary for compliance and legal protection, safeguarding the interests of the company.

Financial and Audit Compliance



Accounting Standards and Financial Statements

Importance of Compliance

Section 8 companies must adhere to accounting standards to maintain transparency and accountability in financial reporting.

Accurate Financial Depiction

Following accounting standards ensures that financial statements reflect the true financial health of the organization.

Stakeholder Confidence

Adhering to applicable standards builds trust among stakeholders by providing reliable financial information.

Statutory Audits



Requirement for Statutory Audits

Section 8 companies must appoint statutory auditors to ensure compliance with financial regulations and transparency.



Role of Statutory Auditors

Statutory auditors play a critical role in providing stakeholders with accurate and reliable financial information through yearly audits.



Stakeholder Trust

Conducting statutory audits helps build trust among stakeholders by ensuring financial integrity and accountability within the organization.

Taxation and Financial Disclosures

Taxation Obligations

Section 8 companies must adhere to specific taxation obligations to remain compliant with legal standards.

Financial Disclosure Requirements

Understanding financial disclosure requirements helps Section 8 companies provide transparency and accountability in their operations.

Avoiding Penalties

Proper compliance with tax laws prevents penalties and ensures the organization's non-profit status is maintained.

CSR Expenses Utilisation Responsibility Reporting



CSR Obligations

Understanding & Ensuring CSR Obligations

Once the CSR money is collected by Section 8 Companies, the same has to be deployed into specific CSR activities for which it has been collected and proper accounting and reporting has to be prepared, maintained and reported which is crucial for their operational integrity.

Legal Requirements

- NGO has to issue Utilisation Certificate, which is a primary document stating that the money collected would be spent on the specific activity for which it is collected.
- Further, as per Income Tax Laws, if NGO is unable to spend certain % of the amount every year, they may lose the Tax Exemption.
- NGO accepting donation from outside India (known as FCRA) are under strict RADAR from the Govt of India

Penalties and Consequences of Non- Compliance

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- 1) Default under the Companies Act, 2013 will lead to various penalties as discussed earlier.
 - 2) Section 8 Companies are Socially responsible, hence violation or default will also impact them as well as people associated with such Companies like Volunteers working on the Project, Companies giving Donation (CSR funds), Staff Members, and the Regulatory Authorities

- 3) Section 8 Companies are now-a-days going through a detail scrutiny/ scanning from the regulatory authorities due to various past defaults and scams
- 4) With the allotment of CSR 1 and detail reporting under CSR 2 giving absolutely & very minute detailing will lead to more questions from the regulators in the coming days

Solution?

**Appoint /
Consult
a
Company
Secretary**

Q & A

Thank You
CS Sandeep Parekh