

**FAQs**  
**on**  
**Section 8 Companies**

**(The Companies Act, 2013 Series)**



**THE INSTITUTE OF**  
**Company Secretaries of India**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

AUGUST 2016

PRICE : Rs. 200/-

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*Published by :*

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ISBN : 978-9382207498

*Printed at : Chandu Press/500/August 2016*

## **PREFACE**

The concept of such companies was introduced in Companies Act 1913 that permitted companies with charitable objects etc. to be registered without the words 'Limited' or 'Private Limited'. Section 25 of Companies Act, 1956 was then introduced for such companies based on English Companies Act 1948. The Companies Act, 2013 continues with the provision for such companies and provides for a framework for the same under Section 8 of the Companies Act, 2013. Considering the fact that section 8 companies are distinct when compared to other commercial entities and certain aspects need clarification from time to time. The Central government has also brought out certain exemptions to Section 8 Companies under Section 462 of Companies Act 2013 vide notification dated June 05, 2015. Still there are doubts in the minds of corporate and practitioners with respect to aspects including eligibility, board composition, board committees, board process, e-voting requirements, CSR provisions, General Meeting provisions and so on.

This booklet titled 'Frequently Asked Questions on Section 8 Companies'' attempts to clarify certain questions with respect to the Compliance routine of section 8 Companies.

I commend the dedicated efforts put in by CS Lakshmi Arun, Joint Director and CS Deepa Khatri, Deputy Director in writing the manuscript of this publication under the guidance of CS Alka Kapoor, Joint Secretary, Directorate of Corporate Laws and Governance, ICSI.

I appreciate and acknowledge the efforts of CS Vineet Chaudhary, Central Council Member and Chairman, Corporate Laws and Governance Committee, ICSI and CS Amit Gupta, Regional Council Member, NIRC of ICSI and Practising Company Secretary, Mr V Sreedharan, Practising company Secretary and Past Council Member for their inputs and guidance in the preparation of manuscripts and in reviewing the publication.

I am confident that the publication will prove to be of immense benefit to companies and professional.

In any publication, there is always scope for further improvement. I would personally be grateful to users and readers for offering their suggestions/ comments for further refinement.

Place: New Delhi  
Date : 05 August, 2016

**(CS Mamta Binani)**  
*President*

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# **Introduction**

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## **History of Company with Charitable purpose**

The concept of Section 8 companies was introduced in Companies Act 1913 that permitted companies with charitable objects etc. to be registered without the words 'Limited' or 'Private Limited'.

The restriction was that the Companies were permitted to use the profits only for the purpose for which the company was promoted and there was a prohibition on distribution of dividend.

## **Recommendation by Bhabha Committee**

Based on the recommendation of the Bhabha Committee, Companies Act of 1956 was passed. The Companies Act of 1956 came into force from 1st April, 1956 and was largely based on the English Companies Act of 1948.

Section 25 of Companies Act, 1956 was introduced for such companies based on English Companies Act 1948. Bhabha committee also recommended to permit partnership firms (though not a legal entity) to be members of section 25 companies and provided for cessation of membership of a partnership firm in a section 25 companies on the dissolution of the partnership.

## **Companies Act, 2013**

The Companies Act, 2013 continues with the provision for such companies and provides for a framework for the same under Section 8 of the Companies Act, 2013.

Section 8 continues to provide for restriction on application of profits and permits the same only for the purpose for which the company is promoted, prohibits declaration of dividend, continues to permit partnership firms to be a member of section 8 companies etc. 2013

Act elaborates on the objects for such companies and specifies objects like sports, education, research, social welfare and protection of environment for which the Companies can be formed under this section.

### **Types of NPOs**

In India, there are mainly the following types of non-profit organizations i.e. Section 8 Companies (earlier Section 25):

- Societies registered under section 20 of the Societies Registration Act 1860.
- Trusts formed under Indian Trusts Act 1882

### **Constitutional Framework of NPOs**

Under Schedule VII of the Indian Constitution, the subject 'Trust and Trustees' finds mention at Entry No.10 in the Concurrent List and 'Charities & Charitable Institutions, Charitable and religious endowments and religious institutions' find place at Entry No.28 of the Concurrent list. Therefore both the Centre and the States are competent to legislate and regulate charitable organisations. However Section 8 companies are regulated through the Companies Act, 2013, accordingly the registration and administration of these companies is regulated only by the Central Government.

### **About this Book**

This booklet focuses on FAQs with respect to Section 8 companies considering that section 8 companies are distinct when compared to other commercial entities and certain aspects need clarification from time to time. These FAQs are only views of the Institute on the date of issue of these FAQs and are only to assist the companies and personnel. These FAQs do not in any manner substitute the applicable statutory requirements which must always prevail and must be understood and fully complied with by the Companies and respective personnel. These views are neither legally binding nor have statutory force, whatsoever.

The FAQs are prepared under the following broad heads (only for ease of reference).

1. Eligibility and Licensing provisions
2. Conversion to Section 8 Companies and vice versa

3. General Meetings/E-voting
4. Board of Directors
5. Board process
6. Board Committees
7. Corporate Social Responsibility
8. Amalgamation and winding up
9. Reliefs and Benefits under the Companies Act and Other Acts
10. Contraventions
11. Miscellaneous

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# 1

## Eligibility and Licensing Provisions

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### 1.1 Who can apply for registration of a Section 8 Company?

Any person or an association of persons intending to register a limited liability company for objects specified below can opt to apply for registration of Section 8 Company.

The following have to be proved to the satisfaction of the Central Government that:

- (a) its objects includes promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (b) the company after incorporation intends to apply its profits, if any, or other income in promoting such objects only; and
- (c) the company intends to prohibit the payment of any dividend to its members.

### 1.2 Who is authorized to issue license to Section 8 Companies?

Registrars of Companies of respective jurisdictions are delegated with the powers of Central government to issue license to Section 8 Companies. [vide MCA notification dated 21st May, 2014 – **Annexure D**].

### 1.3 What is the meaning of persons or association of persons as mentioned in Section 8?

The term “person” is not defined under the Companies Act, 2013.

Section 2(41) of the General Clauses Act, 1897 provides that “person” shall include any Company, or association or body



of individuals, whether incorporated or not. Therefore such a person can be natural or a legal person.

It is also relevant to note that by virtue of provisions of section 8(3), even a partnership firm can be a member of Section 8 Company.

#### **1.4 What is the procedure for incorporation of a Section 8 Company?**

To incorporate a Section 8 Company, an application shall be made to the Registrar of Companies in Form no. INC.12, which shall be accompanied, inter alia, by the following documents:

- i. Draft Memorandum of Association (MOA) and Articles of association (AOA) of the Company in prescribed format (Form no. INC – 13) where the photographs of subscribers are affixed.
- ii. A Declaration is to be attached in Form no. INC-14 (on the stamp paper, duly notarized) 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 there under and all the requirements under section 8 have been complied with.
- iii. 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.
- iv. A declaration (in Form no. INC-15) on stamp paper duly notarized by each of the persons making the application and
- v. Form no. INC-9 from each subscribers and first directors, on appropriate stamp paper of the State and duly notarized.

#### **1.5 Can a Company with unlimited liabilities be registered as a Section 8 Company?**

No. Rule 20(1) of the Companies (Incorporation) Rules, 2014

provides that only a limited company registered under this Act or under any previous company law shall make an application to the Registrar for issue of license. Therefore, a company with unlimited liabilities cannot be registered as a Section 8 Company.

**1.6 Is it necessary that Section 8 Companies are to be incorporated as a limited company with share capital?**

Section 8 Company may be incorporated as a company limited by shares or by Guarantee (with or without share capital).

**1.7 Is it mandatory that the name of section 8 Company shall include the words like – Foundation, forum, association, federation, chamber, confederation, Council, electoral trust etc.?**

Yes. As per rule 8(7) of the Companies (Incorporation) Rules, 2014, for the Companies under Section 8 of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc.

**1.8 Whether a Section 8 Company can have objects incidental and ancillary to the attainment of the main objects?**

Rule 19(2) of the Companies (Incorporation) Rules, 2014 provides that the memorandum of association of the Section 8 Company shall be in Form No.INC.13. Review of Form INC 13 clarifies that a memorandum of association of a Section 8 Company may inter-alia provide for the doing of all such other lawful things as considered necessary for the furtherance of the objects for which the company has been incorporated.

**1.9 Whether an Articles of Association of a Section 8 Company can have entrenchment clause?**

Yes, an Articles of Association of a Section 8 Company can have entrenchment clause in terms of provisions of section 5(3).

**1.10 Is there any relaxation in stamp duty payment in incorporation of a Section 8 Company?**

Stamp duty on memorandum & articles of association of a

Company or on any increase in share capital is governed by Indian Stamp Act, 1899 as adopted by respective state or stamp act of respective state, as the case may be. Some of the states provide privileged rates for stamp duty on MOA/ AOA of Section 8 Companies or on increase in authorized share capital. Summary of rate of stamp duty in various states is placed at **Annexure – E**.

**1.11 Is there is any relaxation in Stamp duty payment on issuance of share certificate by a Section 8 Company?**

Stamp duty on issue of share certificates is governed by Indian Stamp Act, 1899 as adapted by respective state or stamp act of respective state, as the case may be. No relaxation of special rate of stamp duty has been provided by any of the state in respect of stamp duty payable on issue of share certificates by Section 8 Company.

**1.12 Is there is any relaxation in stamp duty payment on transfer of shares of Section 8 Company?**

Stamp duty on issue of share certificates is governed by Indian Stamp Act, 1899 and no relaxation of special rate of stamp duty has been provided stamp duty payment on transfer of shares. However, as in case of other Companies, no stamp duty is payable on transfer of shares of section 8 company also, if made in demat mode.

**1.13 Whether a foreign Company can be registered as a Section 8 Company in India?**

Section 2(42) of the Companies Act, 2013 defines the term "Foreign Company" and means any company or body corporate incorporated outside India which–

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

Now since a Company or a body corporate incorporated outside India for doing not for profit activities, which has

opened a branch/liason office in India, cannot fall in definition of a foreign company as business activity is missing. Therefore, such company cannot be termed as foreign company. However, subject to compliance of FEMA regulations, it can open branch/liason offices.

Such not for profit companies or bodies corporate incorporated outside India can promote and register a Section 8 Company in India as a distinct entity.

**1.14 Can a One Person Company (OPC) be incorporated as or convert into a Section 8 Company?**

No. Rule 3 of the Companies (Incorporation) Rules, 2014 prohibits a one person company to be incorporated as section 8 company or to convert into a Section 8 Company.

**1.15 Can a one person company become a member of Section 8 Company?**

No, Rule 3(6) of the Companies (Incorporation) Rules, 2014 prohibits one person company to invest in securities of any body corporate.

**1.16 Can a partnership firm or an Limited Liability Partnership become a member of Section 8 Company?**

Yes, under the Companies Act, 2013, a Partnership firm or an LLP can become the member of Section 8 Company. The provisions of respective Acts need to be complied with by the partnership firm or LLP as the case may be.

**1.17 If a Trust can become member of a Section 8 Company?**

There is no restriction in the provisions of the Companies Act, 2013 for a registered Trust to become a member of Section 8 Company. In case of unregistered trusts, provisions of section 89 would be applicable.

**1.18 Whether a Co-operative society can become subscriber/member of a Section 8 Company?**

In terms of section 8, any person or an association of persons intending to register a limited liability company for objects specified in section 8(1)(a), subject to the restrictions provided in section 8(1)(b) and (c), can opt to apply for registration of Section 8 Company.

The term "person" has not been defined in the Companies Act, 2013. Section 2(41) of the General Clauses Act, 1897 provides that "person" shall include any Company or association or body of individuals, whether incorporated or not.

Section 11 of the Indian Contract Act, 1872 provides that every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is sound mind and is not disqualified from contracting by any law to which he is subject.

Therefore a Co-operative society can be regarded as Person and thus capable of becoming subscriber of a company including Section 8 Company.

**1.19 Can a company be treated as Section 8 Company as well as a small company provided that the company has not exceeded the thresholds prescribed for small companies under section 2(85)?**

No. As per proviso to section 2(85), section 2(85) does not apply to a Section 8 Company and accordingly, a Section 8 Company cannot be treated as a small company.

Likewise, a small company on conversion to a Section 8 Company shall cease to be a small company.

**1.20 Can Section 8 Companies receive contributions from overseas or non-residents?**

There are special requirements to be complied with under the Foreign Contribution and Regulation Act, 2010 before a Section 8 Company can receive any contributions or donations from overseas/outside India from non-residents. The provisions of the said Act are in addition to the provisions under the Companies Act.

**1.21 Can a Section 8 Company alter its Memorandum of Association or Articles of Association by only passing a special resolution?**

A Section 8 Company can alter the provisions of its Memorandum or articles by passing a special resolution,

however such alteration requires the approval of the Registrar of Companies [vide MCA notification dated 21st May, 2014].

Further, if alteration in Memorandum or Articles results in conversion of Section 8 Company to any other kind of company, prior approval of Central Government is required. Such power is delegated to Regional Director [vide MCA notification dated 21st May, 2014].

**1.22 Section 8 Companies are exempted to suffix Limited/Private Limited with the name of the company. What is the significance of this exemption? Does it affect their limited liability?**

No, the Section 8 Companies enjoy limited liability even without adding the words "Limited" or "Private Limited". No, it does not affect their limited liability.

**1.23 Can section 8 companies be a holding company of another company?**

Yes, section 8 company can promote another company and be a holding company of another company.

**1.24 Whether existing section 25 companies registered under the Companies Act, 1956 are required to obtain license under section 8 of the Companies Act, 2013?**

No, the existing section 25 companies are not required to obtain license under Companies Act, 2013. The existing registrations and licenses issued under the 1956 Act, (upon repeal) shall be protected under section 465 of the Companies Act, 2013.

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## 2

### **Conversions to Section 8 Companies and vice-versa**

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**2.1 What are the pre-conditions and the procedure for conversion of companies already registered under the Companies Act 1956 or Companies Act, 2013 into a Section 8 Company?**

Any existing limited company registered under this Act or under any previous company law can apply for conversion subject to the following:

The Memorandum and Articles of Association either have (or are amended such that they have) the objects specified in clause (a) of sub-section (1) of Section 8 and the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section are incorporated in the Memorandum/ Articles, and the Company is desirous of being registered under Section 8, without the addition to its name of the word "Limited" or as the case may be, the words "Private Limited".

For conversion, the procedure prescribed under section 8(5) read with Rule 20 of the Companies (Incorporation) Rules, 2014 shall apply.

**2.2 Can a company registered under Section 8 be converted into any other company?**

Yes, a Section 8 Company can be converted into any other company including OPC as prescribed under Section 8(4)(ii) read with Rules 21 and 22 of Companies (Incorporation) Rules, 2014. This is further subject to restrictions and compliances as per other applicable laws including Income tax Act, 1961.

**2.3 Can a Society registered under the Societies Registration Act, 1860 be registered/converted into Section 8 Company?**

Yes. Section 8(1) of the Companies Act, 2013 allows person or association of persons to be registered as a Section 8 Company on fulfillment of certain conditions and procedure as prescribed therein. The term "person" has not been defined in the Companies Act, 2013. Section 2(41) of the General Clauses Act, 1897 provides that "person" shall include any Company, or association or body of individuals, whether incorporated or not. Accordingly, a Society registered under the Societies Registration Act, 1860 is a person. Therefore, Society can be registered/converted as a Section 8 Company.

**2.4 Can a Co-operative Society registered under the Co-operative Societies Act or Multi State Co-operative Societies Act be registered/converted in to a Section 8 Company?**

Section 8(1) of the Companies Act, 2013 provides for registration of a person or association of persons as a section 8 Company on fulfillment of certain conditions and procedure as prescribed therein. The term "person" has not been defined in the Companies Act, 2013. Section 2(41) of the General Clauses Act, 1897 provides that "person" shall include any Company, or association or body of individuals, whether incorporated or not. Section 9 of The Multi-State Cooperative Societies Act, 2002 provides that Multi-State Cooperative Society shall be a Body corporate on its registration.

In view of above it can be concluded that a Multi-State Cooperative Society is a person and accordingly can be registered as a Section 8 Company in terms of the provisions of the Companies Act, 2013 after completion of necessary formalities prescribed therein.

**2.5 Can a Trust registered under the trust Act be registered/converted in to a Section 8 Company?**

Section 8(1) of the Companies Act, 2013 allows person or association of persons to be registered as a Section 8 Company on fulfillment of certain conditions and procedure as prescribed therein. The term "person" has not been



defined in the Companies Act, 2013. Section 2(41) of the General Clauses Act, 1897 provides that "person" shall include any Company, or association or body of individuals, whether incorporated or not. Accordingly, a Trust is a person. Therefore, there is no bar in conversion of trust to Section 8 Companies.

**2.6 Can a Limited liability partnership be registered/ converted in to a Section 8 Company?**

Yes. Section 8(1) of the Companies Act, 2013 allows person or association of persons to be registered as a Section 8 Company on fulfillment of certain conditions and procedure as prescribed therein. The term "person" has not been defined in the Companies Act, 2013. Section 2(41) of the General Clauses Act, 1897 provides that "person" shall include any Company, or association or body of individuals, whether incorporated or not. Accordingly, a Limited Liability Partnership is a person. Therefore, it can be registered/ converted as a Section 8 Company.

**2.7 Whether a One person Company can be converted in to a Section 8 Company?**

Yes, one person company may convert itself into a private/ public company and then conversion of such private/public company into Section 8 is possible.

**2.8 Can a partnership firm be registered/converted in to a Section 8 Company?**

Yes. Section 8(1) of the Companies Act, 2013 allows person or association of persons to be registered as a Section 8 Company on fulfillment of certain conditions and procedure as prescribed therein. The term "person" has not been defined in the Companies Act, 2013. Section 2(41) of the General Clauses Act, 1897 provides that "person" shall include any Company, or association or body of individuals, whether incorporated or not. Accordingly, a Partnership Firm is a person.

Therefore, a partnership firm can be registered as a Section 8 Company.

**2.9 Whether a Section 8 Company can be converted into a One person Company?**

No, Rule 7(1) of the Companies (Incorporation) Rules, 2014 prohibits conversion of Section 8 Company to one Person Company.

**2.10 Is it mandatory to publish advertisement in newspaper at the time of conversion of an entity in to a Section 8 Company? If yes, in what form and manner?**

Yes. Rule 20 of Companies (Incorporation) Rules, 2014 provides for the procedure for conversion of an entity into a Section 8 Company. Sub-rule (3) of rule 20 of Companies (Incorporation) Rules, 2014 provides that any entity which is desirous of being registered as section 8 Company, it, inter-alia, shall be required to publish a notice in Form No. INC- 26 within a week from the date of making the application to the Registrar in at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district. A copy of the notice, as published, shall be sent forthwith to the Registrar and also to be placed on the websites as may be notified by the Central Government.

**2.11 Whether the object of a Section 8 Company can extend beyond the state in which its registered?**

Yes. Clause 4 of the Form INC 13 provided under rule 19(2) of the Companies (Incorporation) Rules, 2014 requires to make mention that – “The objects of the company extend to the ..... ” Further like other Companies, the section 8 Companies objects can extend beyond state in which its registered office is situated.

**2.12 Whether the object of Section 8 Company can extend beyond the India?**

Yes. Clause 4 of the Form INC 13 (Memorandum of Association) filed in pursuant to Rule 19(2) of the Companies (Incorporation) Rules, 2014 requires to state that “The

objects of the company extend to the ..... ." Further states that "here enter the name of the State or States, and Country or Countries." Accordingly, the objects of Section 8 Company may be extended beyond India.

**2.13 Whether Section 8 Company can carry out micro finance activities?**

Yes, subject to compliance of applicable RBI Act, Guidelines and directions, Section 8 Companies can carry out micro finance activities. The micro finance activities should be for the promotion of activities as stated in section 8(1)(a) of the Companies Act, 2013

**2.14 Whether Section 8 Company can be formed for providing advisory, consulting services to Section 8 Companies?**

Yes, in line with the objects stated in section 8(1)(a) of the Companies Act, 2013.

**2.15 Whether Section 8 Company can alter its objects? If yes, if any permission required?**

Yes, the objects of Section 8 Company can be altered by taking shareholders' approval and approval of Registrar of Companies in terms of Section 8.

**2.16 Is there is any restriction on a Section 8 Company from making borrowings from bank, financial institutions etc.?**

There is no restriction on borrowing by Section 8 Company. However, provisions of section 180, if applicable, required to be complied with.

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# 3

## General Meetings and E-voting

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- 3.1 While fixing the time, date and place of annual general meeting, whether Board is bound to consider directions, if any, given by the members in its general meeting.**

Yes, in pursuance of the second proviso to section 96(2), the time, date and place of each annual general meeting is required to be decided upon before hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.

- 3.2 Can a Section 8 Company hold a meeting of the members with less than 21 days notice?**

Yes, Section 8 Company can hold a meeting with minimum 14 days notice as against 21 days notice otherwise applicable under section 101 (1) of Companies Act.

The words "twenty one days" was substituted with the words "fourteen days" vide notification G.S.R. 466(E) dated 5th June, 2015.

- 3.3 What is the time period required under section 136(1) for sending copies of financial statements to various stakeholders for section 8 companies?**

In view of the exemption notification, copy of audited financial statements shall be sent to various recipients not less than 14 days before the date of meeting. Earlier, the period was twenty one days as notified vide notification G.S.R. 466(E) dated 5th June, 2015.

- 3.4 In view of the exemption notification, section 160 of the Companies Act 2013 is not applicable to companies whose articles provide for election of directors by ballot. Does this mean that if the Articles of a section 8 company do**

**not provide specifically for election of directors by ballot then Section 160 applies and consequentially a deposit of Rs. 1 lac is mandatorily required to be taken from persons standing for directors election as per section 160?**

Yes, if election of directors by ballot is not prescribed in the Articles, then, section 160 applies and consequentially a deposit of Rs. 1 lac is mandatorily required to be taken from persons standing for director's election.

**3.5 Is Section 8 Company required to comply with requirements of recording minutes of proceedings of the general meetings, Board etc as prescribed under section 118 of the Companies Act 2013?**

No, in view of exemption notification G.S.R. 466(E) dated 5th June, 2015. Section 118 does not apply as a whole except that minutes may be recorded within 30 days of the conclusion of the meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.

**3.6 Whether Section 8 Company, having number of members 1000 or more, required to provide e-voting facility to its members at general meeting?**

Yes, in terms of section 108 read with Rule 20 of the Companies (Management and Administration) Rules, 2014.

**3.7 Whether Section 8 Company is required to transact the business through postal ballot.**

Yes. In terms of section 110 read with Rule 22 of the Companies (Management and Administration) Rules, 2014, the companies having more than 200 members are required to transact business through postal ballot.

**3.8 Can a member of a Section 8 Company appoint any person who is not a member of such Company, as his proxy for general meeting?**

In terms of 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.

# 4

## Board of Directors

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### 4.1 **Are there any prescribed criteria with respect to Minimum and Maximum number of directors in a Section 8 Company?**

The prescription under section 149(1) of Companies Act 2013 as to having Minimum of three directors for public limited company and two directors for private limited company and maximum of fifteen directors is not applicable to section 8 company and thus there is no prescription with respect to minimum or maximum directors in a section 8 Company.

However, second proviso to section 149(1) requires a woman director in prescribed class of companies. Also section 149(3) requires every company to have a resident director.

### 4.2 **Will the directorship in Section 8 Company be counted for calculating the total number of maximum directorships i.e. twenty as prescribed under Section 165 of Companies Act, 2013?**

No, directorship in Section 8 Companies will not be counted for calculating the ceiling with respect to maximum number of directorships as prescribed under Section 165 of the Companies Act 2013.

### 4.3 **Is it mandatory for a Section 8 Company to appoint an Independent Director?**

No, Section 8 Companies are exempted from the requirement of appointment of independent director and all the consequential provisions relating to Independent directors under section 149(1) of the Companies Act, 2013 vide exemption notification dated June 05, 2016.

**4.4 Whether section 8 company is required to appoint Women director?**

Yes, Section 8 Company, if covered under limits as prescribed under Rule 3 of Companies (Appointment of Directors) Rules, 2014 is required to appoint women director under second proviso to section 149(1). Also, every existing section 8 company falling under the prescribed criteria should have complied with this provision within one year from the commencement of this provision i.e by March 31, 2015.

Also, if Section 8 Company is incorporated under Companies Act, 2013 and falls under second proviso to section 149(1), then, it should comply with the requirement of appointing women director within six months of the incorporation of the company.

**4.5 Whether Section 8 Companies are required to appoint a Resident director?**

Yes, section 8 company is required to have atleast one director who has stayed in India for a total period of not less than one hundred and eighty two days within the previous calendar year i.e. Resident Director under section 149(3).

**4.6 Can shareholder of section 8 company be a director of the same?**

Yes, there is no specific prohibition on such appointment as director.

**4.7 Whether Section 8 Company which is a public limited company required to have prescribed numbers of retiring directors? And if certain no of directors of such company are required to retire at annual general meeting of each year?**

Yes, in terms of section 152(6), atleast two-third of total numbers of directors shall be retiring. In terms of section 152(6)(C), atleast one-third of total directors, for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

**4.8 Whether a Section 8 Company can issue bonus shares?**

No, a Section 8 Company is prohibited from issue of bonus shares in view of the following :

- As per section 8(1)(b) of the Act, Section 8 Company shall intend to apply its profits, if any, or other income in promoting its objects;
- As per section 8(1)(c) of the Act, Section 8 Company should intend to prohibit the payment of any dividend to its members; and

Further, Rule 22 (4) of the Companies (Incorporation) Rules, 2014 requires a declaration from Board of directors that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise to persons who are 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.

Therefore, a Section 8 Company cannot issue bonus shares.

**4.9 Whether a Section 8 Company can pay bonus to its employees? And what if, an employee is also a member?**

Clause 5(ii) of the Form INC 13 provided under rule 19(2) of the Companies (Incorporation) Rules, 2014 provides that – “No portion of the profits, other income or property aforesaid shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons who, at any time are, 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.” In view of the above there is no restriction in payment of bonus to employees, however bonus can not be paid to a member, even in his capacity as an employee

**4.10 Is there is any restriction in payment of remuneration to an employee/director, who is also a member by such Section 8 Company? If he can be provided any other benefit in money or money's worth?**

There is not any restriction in payment of remuneration to



an employee/director. In case the employee is also a member, no remuneration or other benefit in money or money's worth can be given to him except payment of out-of pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises let to the company.

**4.11 If there is any restriction in payment of any fees to a member by a Section 8 Company against actual services rendered?**

In terms of clause 5(v) of the draft memorandum of association of Section 8 Company in form INC 13, such company may in good faith pay prudent remuneration to any of its members in return for any services (not being services of a kind which are required to be rendered by a member), actually rendered to the company

**4.12 If a Section 8 Company can take loan from its members and pay interest thereupon?**

Yes a section 8 company can take loan from its members and pay interest thereupon, subject to the provisions of Chapter V of the Act read with rules made thereunder.

**4.13 If a Section 8 Company can pay rent towards the property taken on lease by such Section 8 Company?**

In terms of clause 5(v) of the draft memorandum of association of Section 8 Company in form INC 13, Section 8 Company can pay reasonable & proper rent to the member on premises let to the company.

**4.14 If a Section 8 Company can issue redeemable preference shares?**

Since there is restriction in section 8(1) for distribution of profits and payment of any dividend to its members, the company cannot issue redeemable preference shares.

# 5

## Board Process

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**5.1 Does liability of Non-Executive Directors also ends by the exemption notification for section 149(12) of the Companies Act, 2013?**

No, in view of exemption notification, liability of only Independent Directors ends. In case of Non-executive directors, not being promoter or key managerial personnel, they shall be liable for only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

**5.2 How many meetings of Board of Directors of section 8 companies are required to be held in a year?**

In view of exemption notification read with section 173(1), section 8 companies are required to have atleast one meeting within every six calendar months.

**5.3 What is the quorum for board meetings of section 8 companies?**

As per section 174(1) read with exemption notification, quorum for board meetings of section 8 companies is eight directors or 25% of its total strength, whichever is lower. However, the quorum shall not be less than two members.

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# 6

## Board Committees

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- 6.1 When there is no requirement for Section 8 Companies to appoint an independent director, what is the criterion for the composition of Audit Committee on the Board of Section 8 Company?**

The audit committee of Section 8 Company need not have an independent director. As per section 177(2), Audit Committee of Section 8 Companies shall consist of minimum 3 directors. Further, its proviso requires majority of members including the Chairperson with the ability to read and understand financial statements.

- 6.2 What are the other exemptions to section 8 companies with respect to Board Committees?**

Section 8 Companies need not constitute a nomination and remuneration committee and stakeholder's relationship committee, which are otherwise prescribed under Section 178 of the Companies Act, 2013.

Also, if the company has more than 1000 members or shareholders, still the requirement of having Stakeholders Relationship committee does not arise under section 178(5) of the Companies Act, 2013. Section 178 as a whole does not apply to Section 8 Company vide exemption notification dated 05th June, 2015.

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# 7

## Corporate Social Responsibility

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**7.1 Is a Section 8 Company, which is itself engaged in CSR activities also required to mandatorily comply with provisions of section 135 and contribute towards CSR?**

Yes, in view of the report of Corporate Laws Committee, section 135 applies to every company including section 8 company fulfilling the criteria laid down in that section.

Relevant Extract of Report of Companies Law Committee is as under:

“The Committee, however, felt that it would not be appropriate to give differential treatment to section 8 companies in the matter of providing exemptions from compliance of CSR provisions, as there are certain areas where examples could be found of section 8 and other companies co-existing, for example, companies in microfinance business. Further, there should not be a difficulty in section 8 companies using the prescribed percentage of its surplus for CSR activities. Thus, it was decided not to recommend for exemption of Section 8 companies from the CSR provisions of the Act”.

**7.2 Is Section 8 Company compliant if it contributes the CSR amounts towards its own activities which may be charitable in nature and in line with the CSR approved areas of spent?**

No, spending by the company in its own activities will not qualify as CSR spend. The amount needs to be spend on activities other than normal activities of the company and not for the benefit of the company or its employees.

Further, MCA General circular No 21/2014 dated June 18, 2014 clarifies that contribution to corpus of a Trust / Society / Section 8 Companies etc. will qualify as CSR expenditure as long as :

- (a) the Trust / Society / Section 8 Company etc. is created exclusively for undertaking CSR activities or
- (b) Where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

**7.3 If a 'for profit Company', which has promoted a Section 8 Company for carrying out its Corporate Social Responsibility (CSR) activities and that Section 8 Company is a Subsidiary/associate/Joint venture Company, if such for profit Company is required to consolidate the annual accounts of such Section 8 Subsidiary/associate/Joint venture Company?**

Yes, No specific exemption from consolidation of such section 8 Company. However, exemption as per the provisions of section 129(3) read with rule 6 of the Companies (Accounts) Rules, 2014, if applicable, may be available.

**7.4 If a Section 8 Company meeting all other prescribed thresholds for applicability of filing of annual accounts in XBRL format, be required to file the same in XBRL?**

Yes, if a section 8 company falls in the parameters specified in rule 3 of the Companies (Filing of documents and forms in XBRL) Rules, 2015. The rule provides that the following class of companies shall file their financial statement and other documents under section 137 of the Act the Registrar in e-form AOC-4 XBRL given in Annexure-I for the financial years commencing on or after 1st April 2014 using the XBRL taxonomy given in Annexure II, namely:-

- i. all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- ii. all companies having paid up capital of rupees five crore or above;

- iii. all companies having turnover of rupees hundred crore or above; or
- iv. all companies which were hitherto covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011:

Provided that the companies in Banking, Insurance, Power Sector and Non Banking Financial companies are exempted from XBRL filing.

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# 8

## Amalgamation and Winding Up

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### **8.1 Can a Section 8 Company be amalgamated with a company which is not a Section 8 Company?**

No. Section 8(10) provides that a company registered under section 8 shall amalgamate only with another company registered under section 8 company and having similar objects.

In view of section 8(10), Section 8 Company cannot be amalgamated with a company which is not a Section 8 company.

### **8.2 Can a Section 8 Company be amalgamated with another Section 8 Company? Is amalgamation allowed if the objects of the two Section 8 Companies are different?**

Section 8 Company can be amalgamated with another Section 8 Company. However section 8(10) provides that the other company be "having similar objects". What are similar objects is not specified. Therefore a view is possible that so long as the main objects of two section 8 companies are within the objects specified under section 8 (1) (a) the objects will be considered similar because the similarity between the objects is established by the fact that with either of such objects the said companies can be registered as section 8 companies. It is not necessary that the objects of the two section 8 companies be identical. The words "having similar objects" should not be read in a limited sense.

### **8.3 In case of winding up of a Section 8 Company, how will the residual profit be treated?**

Any asset that remains after satisfaction of its debts will be

transferred to another company registered under section 8 and having similar objects, subject to such conditions as the National Company Law Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under Section 269 of Companies Act, 2013.

The Insolvency and Bankruptcy Act, 2016 proposes that in section 8(9), for the words "the Rehabilitation and Insolvency Fund formed under section 269", the words "Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016" shall be substituted.

**8.4 Whether a Section 8 Company can demerge any of its division? If yes, If it is necessary that such demerged entity shall also be a Section 8 Company?**

Yes there is no restriction in demerger of any division of a Section 8 Company. However considering the restrictions placed under section 8(10) and in Form INC 16 (license issued by the Central Government) in terms of rule 20 of the Companies (Incorporation) Rules, 2014, only with another company registered under section 8 of the Act and having similar objects, an analogy can be drawn that such demerged entity shall also be a Company registered under Section 8 of the Companies Act, 2013.

**8.5 If a Section 8 Company can make an application for strike off of a name of a Company from Register of Companies maintained by the Registrar?**

In terms of General Circular No. 36/2011 dated 07.06.2011 regarding Guidelines for Fast Track Exit mode for defunct companies under section 560 of the Companies Act, 1956, the fast track exit mode for declaration of a Section 8 Company as defunct shall not be available.

However there seems no restriction in striking off name of a Section 8 Company by the Registrar of companies on suo moto basis, as per process specified in section 560 of the Companies Act, 1956 (Section 248 of the Companies Act, 2013).

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# 9

## Reliefs and Benefits under the Companies Act and other Acts

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### 9.1 Whether appointment of Company Secretary under section 2(24) is required for Section 8 Companies?

As per exemption notification dated 05th June, 2015, the definition of Company Secretary in section 2(24) of the Companies Act, 2013 is not applicable on Section 8 Companies.

### 9.2 What are the additional activities which can be passed by the Board of section 8 companies through circulation?

The activities which may be passed by the Board of section 8 companies through circulation instead of at a meeting, as given under section 179(3) are:

- to borrow monies
- to invest the funds of the company
- to grant loans or give guarantee or provide security in respect of loans

### 9.3 Whether interested directors are required to give disclosure of its interest under section 184(2) for all transaction with reference to section 188 or not?

Section 184(2) prohibits participation of interested directors. In case of Section 8 Company, it shall apply only if the transaction with reference shall apply if the transaction with reference to section 188 on the basis of terms and conditions of the contract and arrangement exceeds one lakh rupees. [vide notification dated 5th June, 2015]

The transactions as specified in section 188 are:

- (a) sale, purchase or supply of any goods or materials;

- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- (g) underwriting the subscription of any securities or derivatives thereof, of the company

**9.4 Whether maintenance of Register of contracts or arrangements in which directors are interested is required to be maintained by section 8 companies?**

The requirement of maintenance of Register of contracts or arrangements in which directors are interested under section 189 applies only if a transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.

**9.5 What are the reliefs and benefits available to a Section 8 Company under the provisions of Income Tax Act, 1963? If any registration is required to be made/obtained for claiming such reliefs and benefits?**

The legal frame work, granting exemption to a company registered under Section 8 of the Companies Act, 2013 is contained in one or more of the following sections of Act:-

- (i) Section 2(15) – definition of charitable purpose;
- (ii) Section 2(24) (ia) – income includes voluntary contributions;
- (iii) Section 10 – incomes not included in total income;
- (iv) Sections 11,12, 12A – income from property held for charitable purposes and income of trusts or institutions from contributions;

- (v) Sections 12AA and 13 – Procedure for registration and non-applicability of Section 11 in certain cases; and
- (vi) Sections 35(1)(ii) and 35(i)(iii) – Expenditure on scientific research.

According to section 2(15) of Income Tax Act, 1961, “charitable purpose” includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is Twenty five lakh rupees or less in the previous year.

According to section 2(24)(iia) of Income Tax Act, 1961, income includes – “voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iii ae) or sub-clause (via)] of clause (23C) of section 10 or by an electoral trust. Explanation.— For the purposes of this sub clause, “trust” includes any other legal obligation.

According to section 12A of Income Tax Act, 1961, provisions

of section 11 and section 12, regarding exemption of income, will not be applicable to an institution etc., unless an application for its registration is made to the Commissioner of Income Tax within a period of one year from the date of its creation. [Section 12AA (2)]

Section 12A(b) also requires that if income of a trust etc. in any previous year exceeds the maximum amount which is not chargeable to income-tax in any previous year before giving effect to provisions of section 11 and section 12, then its accounts are required to be audited by an accountant and his report has to be filed along with the return of income.

While making an application for registration, the following points should be kept in mind –

- i. there should be a legally existent entity, which can be registered;
- ii. it should have a written instrument of its creation or written document evidencing its creation;
- iii. all its objects should be charitable or religious in nature;
- iv. its income and assets should be made applicable towards objects only, mentioned in the object clauses, and Rules and Regulations;
- v. to its members, directors or founders, related persons or relatives etc. claiming through them; and
- vi. in case of dissolution, its net assets after meeting all its liabilities, should not be revertible or reverted to its founder, members, directors or donors etc., but used for the objects.

Section 11 of Income Tax Act, 1961 permits deduction of expenditure from income. The expenditure incurred by a trust or institution by way of application of income in India towards religious or charitable purposes, as per its Memorandum, is deductible from the income. The assessee may also set apart and accumulate 15% of income for such application and such amount will also be taken as expenditure of the year. These provisions are applicable

mutatis-mutandis to a partly religious or charitable trust. This section also permits deduction of expenditure incurred outside India provided that such application of income promotes international welfare in which India is interested. However, for deduction of such expenditure, prior approval of the Board is required.

Section 11(1A) of Income Tax Act, 1961 deals with Capital Gains arising or accruing to a charitable trust or institution. If the whole of the net consideration (Consideration minus the expenditure incurred in connection with transfer) is applied towards acquiring a new capital asset, then, the capital gains is taken to have been applied for charitable or religious purpose. However, if only a part of the net consideration is applied for acquiring a new capital asset, then, the capital gains to the extent of differences between amount so applied and original cost of the asset is taken to be applied for religious or charitable purpose. The provision applies mutatis-mutandis where the capital asset is held partly for religious or charitable purpose.

Section 11(4A) of Income Tax Act, 1961 deals with income of a trust or institution byway of a business, which is incidental to attainment of its objects. The income of such a business will be entitled to exemption u/s 11 if separate books of account are maintained, otherwise, the income will not be entitled to benefit of exemption under section 11 and section 12.

Section 11(4) states that a business as a going concern can be held as property under trust. Therefore, a legitimate claim can be made that the income of such business may not be included in the total income of the person receiving such income. In such a case, the assessing officer is required to assess the income of such business under the provisions of the Act. The difference between income so determined and the income shown in accounts shall not be deemed to have been applied towards religious or charitable purpose, but applied to other purposes. The point to be noted is that the income of the business has to be calculated under usual provisions contained in Chapter IV-D and not as per Chapter III of the Act, applicable to income of charitable trusts and institutions.

**9.6 What is the meaning of “Charitable Purpose” in terms of the provisions of Section 2(15) of the Income Tax Act, 1962? What is meaning of the term “any other object of general public utility” later added in the above definition?**

According to Sec.2(15) of Income Tax Act, 1961, “charitable purpose” includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is Twenty five lakh rupees or less in the previous year.

**9.7 What are the reliefs and benefits available to a Section 8 Company under the provisions of Foreign Contribution (Regulation) Act, 2010? If any registration is required to be made/obtained for claiming such reliefs and benefits?**

Section 8 Company can register under FCRA to receive funds from foreign source. Registration under FCRA is mandatory for availing such benefits.

**9.8 If a Section 8 Company is entitled for any exemptions/reliefs from payment/applicability of excise duty, service tax, customs duty, deduction of tax at source, collection of tax at source etc.?**

No, specific exemption to Section 8 Company is not available.

**9.9 If a Section 8 Company can raise capital through foreign direct investment?**

FDI in Section 8 Companies can be brought in subject to compliance of FEMA Regulations.

**9.10 If a Section 8 Company can raise funds through external Commercial borrowings?**

External Commercial Borrowings in Section 8 Companies be brought in subject to FEMA Regulations.

**9.11 If there is any restriction on a Section 8 Company from making investments, giving loans, guarantees etc. to other Companies?**

Yes as per section 180 and section 186, Section 8 Company can give loans or guarantees or provide security in connection with loan or acquire by way of subscription, purchase or otherwise, the securities of the company.

**9.12 If a Section 8 Company can have for profit subsidiary?**

Yes, there is no specific restriction for section 8 companies to invest in 'for profit' companies. Therefore, Section 8 Company can have for profit subsidiary.

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# 10

## Contraventions

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### 10.1 What are the consequences of contravening Section 8 of Companies Act, 2013?

The Central Government may

- (i) Revoke the licence issued and covert the status and change its name to add the words 'Limited" or "Private Limited" as the case may be.
- (ii) Order for amalgamation of company with similar objects
- (iii) Order for winding up.
- (iv) Section 8 Company and the respective officer in default is liable for penalty prescribed

### 10.2 What are the penalties prescribed under Section 8?

For Company: fine not less than Rs 10 lakh, which may extend to Rs 1 crore for directors/officers in default.

Imprisonment for a term which may extend to 3 years or a fine not less than Rs 25000 which may extent to Rs 25 lakhs or with both.

### 10.3 What are the consequences when the affairs of section 8 companies are conducted fraudulently?

Every officer in default shall be liable for action under Section 447 of Companies Act for punishment of fraud. The punishment is imprisonment for a term not less than 6 months which may extend to 10 years and shall be liable for a fine which shall not be less than the amount involved in the fraud which may extend to three times the amount involved in the fraud. It is a non-compoundable offence. (Proviso to Section 8(11).

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# 11

## Miscellaneous

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**11.1 What is a procedure for making allotment of securities by Section 8 Company?**

There is no specific exemption to Section 8 Companies.

**11.2 Whether there is any difference in voting rights of members of Section 8 Company?**

There is no distinction in voting rights of members of section 8 Companies.

**11.3 If a Section 8 Company can secure listing of its Non Convertible Debentures issued on private placement basis at a Stock exchange**

Section 8 Company can secure listing of its Non Convertible Debentures issued on private placement basis at a Stock exchange.

**11.4 If a director of a Section 8 Company is required to make disclosure regarding his interest in all contracts and arrangements and abstain from participation or in certain cases only?**

Yes, like directors of any other company, the director of a Section 8 Company is required to make disclosure regarding his interest in all contracts and arrangements.

**11.5 Whether Section 8 Company can be declared as a Dormant Company?**

Subject to compliance of section 455 of the Companies Act, 2015, Section 8 Company can be declared as a Dormant Company.

**11.6 Whether a Section 8 Company can maintain its books of accounts on cash basis?**

Section 128 of the Companies Act, 2013 provide for maintenance of books of accounts on accrual basis and according to the double entry system of accounting. Thus even a section 8 company can not maintain its books of accounts on cash basis.

**11.7 For what period a Section 8 Company is required to keep its books of accounts?**

Section 128(5) of the Companies Act, 2013 provides that the books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order. However where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

The exemption notification issued under the Companies Act, 1956 provided that the provisions of section 209(4A) of the Companies Act, 1956 shall apply with modification to section 25 companies and the section 25 companies were required to preserve the books of account relating to a period of not less than four years immediately proceeding the current year.

No such exemption notification has been issued in respect of Section 8 Companies under the provisions of the Companies Act, 2013. Accordingly the companies registered under the provisions of section 8 of the Companies Act, 2013 shall also be required to maintain books of accounts for the period of 8 years.

**11.8 If a Section 8 Company is required to prepare its annual accounts in Schedule III of the Companies Act, 2013?**

Yes. Rule 4A of the Companies (Accounts) Rules, 2014 provides that the financial statements shall be in the form specified in Schedule III to the Act and comply with

Accounting Standards or Indian Accounting Standards as applicable. No exemption has been provided in respect of section 8 companies.

**11.9 Whether Accounting Standards are applicable on a Section 8 Company?**

Yes. Rule 4A of the Companies (Accounts) Rules, 2014 provides that the financial statements shall be in the form specified in Schedule III to the Act and comply with Accounting Standards or Indian Accounting Standards as applicable. No exemption has been provided in respect of section 8 companies.

**11.10 If Secretarial Standards are applicable on a Section 8 Company?**

No. Section 8 Companies are exempted from section 118 vide MCA notification dated 5th June, 2015. However, adherence to Secretarial Standards helps Section 8 Companies in raising their Governance standards and faith of stakeholders.

**11.11 If a Secretarial Audit is applicable on a Section 8 Company?**

Yes, if a Section 8 Company falls in the parameters specified in section 204 of the Companies Act, 2013. It means that Section 8 Company is either a listed company or a public company having paid up share capital of Rs. 50 crores or more or a public company having turnover of Rs. 250 crores or more, shall be required to annex secretarial audit report to its board report in terms of the provisions of section 134(3) of the Companies Act, 2013.

**11.12 If a Cost Audit can become applicable on a Section 8 Company?**

Considering the fact that a section 8 company can be formed for the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other objects, the possibility of a section 8 company falling in a class of company specified in section 148(2) of the Companies Act, 2013 is very remote. However if a section 8 company fall in a class of

company specified in section 148(2) of the Companies Act, 2013, the cost audit shall become applicable.

**11.13 If an Internal Audit can become applicable on a Section 8 Company?**

Rule 13 of the Companies (Accounts) rules, 2014 provides that:

(1) The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors, namely:-

(a) every listed company;

(b) every unlisted public company having-

(i) paid up share capital of fifty crore rupees or more during the preceding financial year; or

(ii) turnover of two hundred crore rupees or more during the preceding financial year; or

(iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or

(iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and

(c) every private company having-

(i) turnover of two hundred crore rupees or more during the preceding financial year; or

(ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year:

Provided that an existing company covered under any of the above criteria shall comply with the requirements of section 138 and this rule within six months of commencement of such section.

Therefore, if a Section 8 Company falls in any of the above parameters, it shall be required to appoint an Internal Auditor.

**11.14 If a Companies (Auditors Report) Order, 2016 applicable on a Section 8 Company?**

In terms of the provisions of para 2(iii) of the Companies (Auditors Report) Order, 2016, the provisions of the Companies (Auditors Report) Order, 2016 are not applicable on a Section 8 Companies.

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*Annexure - A*

**Text of Section 8 of Companies Act, 2013**

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**Formation of Companies with Charitable Objects**

8. (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—
- (a) has in its objects 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 profits, if any, or other income in promoting its objects; and
  - (c) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.
- (2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.
- (3) A firm may be a member of the company registered under this section.

- (4) (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.
- (ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.
- (5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.
- (6) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard:

Provided further that a copy of every such order shall be given to the Registrar.

- (7) Where a licence is revoked under sub-section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

- (8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.
- (9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269.
- (10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.
- (11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which



shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

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*Annexure - B*

**Companies (Incorporation) Rules, 2014 -  
Relevant Rules**

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**Rule 12 - Companies (Registration Offices and Fees) Rules, 2014**

**12. Fees**

- (1) The documents required to be submitted, filed, registered or recorded or any fact or information required or authorised to be registered under the Act shall be submitted, filed, registered or recorded on payment of the fee or on payment of such additional fees as applicable, as mentioned in Table annexed to these rules.
- (2) For the purpose of filing the documents or applications for which no e-form is prescribed under the various rules prescribed under the Act, the document or application shall be filed through Form No.GNL.1 or Form No.GNL.2 along with fees as applicable and in case a single form is prescribed for multiple purpose, the fee shall be paid for each of the purposes contained in the single form.
- (3) For the purpose of filing information to sub-clause(60) of section 2 of the Act, such information shall be filled in Form No.GNL.3 along with fee as applicable.

**Rule 19-Companies (Incorporation) Rules, 2014**

**19. License under section 8 for new companies with charitable objects etc.-**

- (1) A person or an association of persons (hereinafter referred to in this rule as "the proposed company"), desirous of incorporating a company with limited liability under sub-section (1) of section 8 without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", shall make an application in Form

No.INC.12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a license under sub-section (1) of section 8.

- (2) The memorandum of association of the proposed company shall be in Form No.INC.13.
- (3) The application under sub-rule (1) 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 No.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;
  - (d) the declaration by each of the persons making the application in Form No.INC.15.

#### **Rule 20-Companies (Incorporation) Rules, 2014**

##### **20. License for existing companies.-**

- (1) A limited company registered under this Act or under any previous company law, with any of the objects specified in clause (a) of sub-section (1) of section 8 and the restrictions and prohibitions as mentioned respectively in clause (b) and (c) of that sub-section, and which is desirous of being registered under section 8, without the addition to its name of the word "Limited" or as the case may be, the words "Private Limited", shall

make an application in Form No.INC.12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a licence under sub-section (5) of section 8.

- (2) The application under sub-rule (1), shall be accompanied by the following documents, namely:-
- (a) the memorandum and articles of association of the company;
  - (b) the declaration as given in Form No.INC.14 by an Advocate, a Chartered accountant, Cost Accountant or Company Secretary in Practice, that the 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) For each of the two financial years immediately preceding the date of the application, or when the company has functioned only for one financial year, for such year (i) the financial statements, (ii) the Board's reports, and (iii) the audit reports, relating to existing companies;
  - (d) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;
  - (e) 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;
  - (f) the certified copy of the resolutions passed in general/ board meetings approving registration of the company under section 8; and
  - (g) a declaration by each of the persons making the application in Form No.INC.15.

- (3) The company shall, within a week from the date of making the application to the Registrar, publish a notice at his own expense, and a copy of the notice, as published, shall be sent forthwith to the Registrar and the said notice shall be in Form No.INC.26 and shall be published-
- (a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district; and
  - (b) on the websites as may be notified by the Central Government.
- (4) The Registrar may require the applicant to furnish the approval or concurrence of any appropriate authority, regulatory body, department or Ministry of the Central Government or the State Government(s).
- (5) The Registrar shall, after considering the objections, if any, received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of the Central Government or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.
- (6) The licence shall be in Form No.INC.16 or Form No.INC.17, as the case may be, and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him.
- (7) The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.

#### **Rule 21-Companies (Incorporation) Rules, 2014**

#### **21. Conditions for conversion of a company registered under Section 8 into a company of any other kind.**

- (1) A company registered under section 8 which intends to

convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.

(2) The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion including the following, namely:-

- (a) the date of incorporation of the company;
  - (b) the principal objects of the company as set out in the memorandum of association;
  - (c) the reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e. as a section 8 company;
  - (d) if the principal or main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;
  - (e) what are the privileges or concessions currently enjoyed by the company, such as tax exemptions, approvals for receiving donations or contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization etc.;
  - (f) details of impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.
- (2) A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in Form No.MGT.14 along with the fee.

- (3) The company shall file an application in Form No.INC.18 with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of serving of the notice served to all the authorities mentioned in subrule (2) of rule 22.
- (4) A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.

**Rule 22-Companies (Incorporation) Rules, 2014**

**22. Other conditions to be complied with by companies registered under section 8 seeking conversion into any other kind.-**

- (1) The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said notice shall be in Form No.INC.19 and shall be published-
  - (a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district;and
  - (b) on the website of the company, if any, and as may be notified or directed by the Central Government.
- (2) The company shall send a copy of the notice, simultaneously with its publication, together with a copy of the application and all attachments by registered post or hand delivery, to the Chief Commissioner of Income Tax having jurisdiction over the company, Income Tax Officer who has jurisdiction over the company, the Charity Commissioner, the Chief Secretary of the State in which the registered office of the company is situated, any

organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating and if any of these authorities wish to make any representation to Regional Director, it shall do so within sixty days of the receipt of the notice, after giving an opportunity to the Company.

- (3) The copy of proof of serving such notice shall be attached to the application.
- (4) The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise to persons who are 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.
- (5) Where the company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority such as Income Tax Department, Charity Commissioner or any organisation or Department of Central Government, State Government, Municipal Body or any recognized authority, a "No Objection Certificate" must be obtained, if required under the terms of the said special status, privilege, exemption, benefit or grant(s) from the concerned authority and filed with the Regional Director, along with the application.
- (6) The company should have filed all its financial statements and Annual Returns upto the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director and in the event the application is made after the expiry of three months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by chartered accountant made up to a date not preceding thirty days of filing the application shall be attached.



- (7) The company shall attach with the application a certificate from practicing Chartered Accountant or Company Secretary in practice or Cost Accountant in practice certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under section 8 into any other kind of company, have been complied with.
- (8) The Regional Director may require the applicant to furnish the approval or concurrence of any particular authority for grant of his approval for the conversion and he may also obtain the report from the Registrar
- (9) On receipt of the application, and on being satisfied , the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case including the following conditions, namely;-
- (a) the company shall give up and shall not claim, with effect from the date its conversion takes effect, any special status, exemptions or privileges that it enjoyed by virtue of having been registered under the provisions of section 8;
  - (b) if the company had acquired any immovable property free of cost or at a concessional cost from any government or authority, it may be required to pay the difference between the cost at which it acquired such property and the market price of such property at the time of conversion either to the government or to the authority that provided the immovable property;
  - (c) any accumulated profit or unutilised income of the company brought forward from previous years shall be first utilized to settle all outstanding statutory dues, amounts due to lenders claims of creditors, suppliers, service providers and others including employees and lastly any loans advanced by the promoters or members or any other amounts due to

them and the balance, if any, shall be transferred to the Investor Education and Protection Fund within thirty days of receiving the approval for conversion;

- (10) Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director
- (11) On receipt of the approval of the Regional Director,
- (i) the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of the section 8 company into a company of any other kind;
  - (ii) the Company shall thereafter file with the Registrar.-
    - (a) a certified copy of the approval of the Regional Director within thirty days from the date of receipt of the order in Form No.INC.20 along with the fee;
    - (b) amended memorandum of association and articles of association of the company.
    - (c) a declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.
- (12) On receipt of the documents referred to in sub rule (10) above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.

#### **Rule 23-Companies (Incorporation) Rules, 2014**

#### **23. Intimation to Registrar of revocation of licence issued under section 8.-**

Where the licence granted to a company registered under section 8 has been revoked, the company shall apply to the Registrar in Form No.INC.20 along with the fee to convert its status and change of name accordingly.

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*Annexure - C*

**Exemption available to Section 8 Companies**

<i>Sl. no.</i>	<i>Provisions of the Act</i>	<i>Exceptions/Modifications/Adaptions</i>
1	Section 2(24)	<p>The provisions of clause (24) of section 2 shall not apply.</p> <p><i>Descriptive Note :</i></p> <p>The Company Secretary of Section 8 Company need not be a member of the Institute of Company Secretaries of India.</p>
2	Section 2(68)	<p>The requirement of Minimum paid-up share capital shall not apply.</p> <p><i>Descriptive Note:</i></p> <p>Section 2(68) defines a private company. Though the companies (amendment) Act 2015 has removed the minimum prescription of Rs.1 lakh as minimum paid up capital for private limited companies, the provisions for prescribing minimum paid up capital is still retained. However, the requirement of minimum- paid up capital shall not apply to section 8 companies.</p>
3	Section 2(71)	<p>The requirement of Minimum paid-up share capital shall not apply.</p> <p><i>Descriptive Note:</i></p> <p>Section 2(71) defines a public</p>

<i>Sl. no. Provisions of the Act</i>	<i>Exceptions/Modifications/Adaptions</i>
	<p>company. Though the companies (amendment) Act 2015 has removed the minimum prescription of Rs.5 lakh as minimum paid up capital for public limited companies, the provisions for prescribing minimum paid up capital is retained. However, the requirement of minimum- paid up capital shall not apply to section 8 companies.</p>
4	<p>Section 96(2)</p> <p>In sub-section (2), after the proviso and before the explanation, the following proviso shall be inserted, namely:-</p> <p>Provided further that the time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.</p> <p><i>Descriptive Note</i></p> <p>Section 96(2) <i>inter-alia</i> covers time, date venue of annual general meeting. In case of Section 8 companies, the time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.</p>
5	<p>Section 101(1)</p> <p>In sub-section (1), for the words "Twenty one days" the words "Fourteen Days" shall be substituted.</p>

<i>Sl. no. Provisions of the Act</i>	<i>Exceptions/Modifications/Adaptions</i>
	<p style="text-align: center;"><i>Descriptive Note</i></p> <p>Section 101(1) deals with notice of the General meeting with clear twenty one days notice. In case of Section 8 Companies 14 clear days notice is sufficient for a general meeting.</p>
6      Section 118	<p>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 confirmation of minutes by circulation.</p> <p style="text-align: center;"><i>Descriptive Note</i></p> <p>Section 118 deals with minutes of proceedings of general/board and other meetings. Provision of Section 118 does not apply to Section 8 companies 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 confirmation of minutes by circulation.</p>
7      Section 136(1)	<p>In sub-section (1), for the words "twenty one days", the words "fourteen days" shall be substituted.</p> <p style="text-align: center;"><i>Descriptive Note</i></p> <p>Section 136(1) deals with the rights of members to copies of audited financial statement, before twenty-one days before the date of annual general meeting. Section 8 companies may send the audited</p>

<i>Sl. no.</i>	<i>Provisions of the Act</i>	<i>Exceptions/Modifications/Adaptions</i>
		financial statements 14 days before the date of annual general meeting.
8	Sub-section (1) of Section 149 and the first proviso to sub-section (1)	<p>Shall not apply.</p> <p><i>Descriptive Note</i> Section 149(1) and first proviso to sub-section (1) relates to minimum and maximum number of directors. It is not applicable to Section 8 Companies.</p>
9	Sub-sections (4), (5), (6), (7), (8), (9), (10), (11), clause (i) of sub-section (12) and sub-section (13) of section 149.	<p>Shall not apply.</p> <p><i>Descriptive Note</i> The cluster of sub-sections of section 149 given herein pertains to independent directors. These provisions will not apply to a Section 8 Company.</p>
10	Section 150	<p>Shall not apply.</p> <p><i>Descriptive Note</i> Section 150 deals with manner of selection of independent directors and maintenance of databank of independent directors, which is not applicable to Section 8 companies.</p>
11	Proviso to sub-section (5) of section 152	<p>Shall not apply.</p> <p><i>Descriptive Note</i> Proviso to sub-section (5) of section 152 relates to appointment of independent directors. It is not applicable to section 8 companies.</p>
12	Section 160	Shall not apply to companies whose articles provide for election of directors by ballot.

<i>Sl. no.</i>	<i>Provisions of the Act</i>	<i>Exceptions/Modifications/Adaptions</i>
		<p><i>Descriptive Note</i></p> <p>Section 160 deals with right of persons other than retiring directors to stand for directorship. Section 160 shall not apply to section 8 companies whose articles provide for election of directors by ballot.</p>
13	Section 165(1)	<p>Shall not apply.</p> <p><i>Descriptive Note</i></p> <p>Section 165(1) deals with restrictions on number of directorships. Directorship of Section 8 Companies are not reckoned for this purpose.</p>
14	Section 173(1)	<p>Shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months.</p> <p><i>Descriptive Note</i></p> <p>Section 173(1) mandates convening of first board meeting within 30 days of incorporation and minimum of four board meeting every year, with a gap not exceeding 120 days between two consecutive meetings. With regard to Section 8 companies this section shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months.</p>
15	Section 174(1)	<p>In sub-section (1),---</p> <p>(a) for the words "one-third of its</p>

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<i>Sl. no. Provisions of the Act</i>	<i>Exceptions/Modifications/Adaptions</i>
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total strength or two directors, whichever is higher", the words "either eight members or twenty five per cent. of its total strength whichever is less" shall be substituted;

(b) the following proviso shall be inserted, namely:-

"Provided that the quorum shall not be less than two members".

*Descriptive Note*

Section 174(1) states that the quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section. In case of Section 8 companies the quorum for the board meetings shall be either eight members or twenty five per cent. of its total strength whichever is less. However, the quorum shall not be less than two members.

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16      Section 177(2)

The words "with independent directors forming a majority" shall be omitted.

*Descriptive Note*

Section 177(2) requires audit committee to have majority of independent directors. It is not required for Section 8 Companies.



<i>Sl. no.</i>	<i>Provisions of the Act</i>	<i>Exceptions/Modifications/Adaptions</i>
17	Section 178	<p>Shall not apply</p> <p><i>Descriptive Note</i></p> <p>Section 178 pertains to nomination and remuneration committee and stakeholders' relationship committee. Section 178 is not applicable to section 8 companies.</p>
18	Section 179	<p>Matters referred to in clauses (d), (e) and (f) of sub-section (3) may be decided by the Board by circulation instead of at a Meeting.</p> <p><i>Descriptive Note</i></p> <p>Section 179(3) deals with resolutions to be passed at meetings of the Board. Section 179(3)(d), (e) and (f) pertains to resolution to borrow moneys, to invest funds of the company and to grant loans or give guarantee or provide security in respect of loans. These items may be decided by the Board by circulation in case of Section 8 companies.</p>
19	Sub-section (2) of section 184	<p>Shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.</p> <p><i>Descriptive Note</i></p> <p>Section 184(2) prohibits participation of interested directors. In case of Section 8 Companies it shall apply only if the transaction with reference to section 188 on the</p>

<i>Sl. no. Provisions of the Act</i>	<i>Exceptions/Modifications/Adaptions</i>
	basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.
20      Section 189	<p>Shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.</p> <p><i>Descriptive Note</i></p> <p>Section 189 deals with register of contracts or arrangements in which directors are interested. Section 189 is applicable to section 8 companies only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.</p>

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*Annexure - D*

## **MCA Notifications**

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**THE GAZETTE OF INDIA : EXTRAORDINARY**

[PART II—SEC. 3(ii)]

**MINISTRY OF CORPORATE AFFAIRS**

**NOTIFICATION**

**New Delhi, the 21st May, 2014**

**S.O. 1353 (E).**—In exercise of the powers conferred by Section 458 of the Companies Act, 2013 (18 of 2013), and in supersession of the notification of the Government of India, Ministry of Corporate Affairs, dated the 10th July, 2012, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii) *vide* number S.O. 1538 (E), dated the 10th July, 2012, in so far as it relates to items (a) to (b) and items (d) to (e), except as respects things done or omitted to be done before such supersession, the Central Government hereby delegates to the Registrar of Companies, the power and functions vested in it under the following sections of the said Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers and functions under the said sections, if in its opinion, such a course of action is necessary in the public interest, namely:—

- (a) sub-section (2) of Section 4;
- (b) sub-section (1) of Section 8;
- (c) clause (i) of sub-section (4) of Section 8, except for alteration of memorandum in case of conversion into another kind of company;
- (d) sub-section (5) of Section 8; and

(e) sub-section (2) of Section 13.

2. This notification shall come into force from the date of its publication in the Official Gazette.

[F. No. 1/6/2014-CL-V]

AMARDEEP SINGH BHATIA, Jt. Secy.

**MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 21st May, 2014**

**S.O. 1352(E).**— In exercise of the powers conferred by Section 458 of the Companies Act, 2013 (18 of 2013), and in supersession of the notification of the Government of India, Ministry of Corporate Affairs, dated the 10th July, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) *vide* number S.O. 1539(E), dated the 10th July, 2012, in so far as it relates to items (a) to (f) and item (n), except as respects things done or omitted to be done before such supersession, the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, Noida, Ahmedabad, Hyderabad and Shillong, the power and functions vested in it under the following sections of the said Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sections, if in its opinion such a course of action is necessary in the public interest, namely :—

- (a) clause (i) of sub-section (4) of Section 8 (for alteration of memorandum in case of conversion into another kind of company);
- (b) sub-section (6) of Section 8;
- (c) sub-sections (4) and (5) of Section 13;
- (d) Section 16;
- (e) Section 87;
- (f) sub-section (3) of Section 111;
- (g) sub-section (1) of Section 140; and
- (h) proviso (i) to sub-section (1) of Section 399.

2. This notification shall come into force with effect from the date of its publication in the Official Gazette.

[F. No. 1/6/2014-CL.-V]

AMARDEEP SINGH BHATIA, Jt. Secy.

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*Annexure - E*

## State wise Stamp Duty Rates

**State wise stamp duty rules for eForm INC-2/ INC-7/ INC-29, Memorandum of Association (MoA), Articles of Association (AoA), eForm SH-7 and eForm FC-1)**

Stamp duty rules for Form INC-2/INC-7/ INC-29, MoA, AoA, and SH-7

Name of state/ union territory	INC-2/ INC-7/ INC-29	Amount in Rupees		
		MoA	AoA	Remarks
Delhi (Section 8 companies)	10	NIL	NIL	
Haryana (Section 8 companies)	15	NIL	NIL	
Maharashtra (Section 8 companies)	100	NIL	NIL	
Orissa (companies having share capital other than Section 8)	10	300	300	These rules shall also apply to companies not having share capital other than section 8 and Section 8 companies.
Andhra Pradesh (companies having share capital other than section 8)	20	500	0.15% of the authorized capital subject to a minimum of Rs.1000/-and a maximum of Rs.5 lakhs	These rules shall also apply to section 8 companies having share capital.  Stamp rule for SH-7 implies that the maximum limit of Rs. 5 Lakhs shall be calculated every time

Name of state/ union territory	INC-2/ INC-7/ INC-29	Amount in Rupees		
		MoA	AoA	Remarks
Andhra Pradesh (companies not having share capital other than section 8)	20	500	1000	there is any increase in share capital, even if the company has already paid Rs. 5 Lakhs of stamp duty.  These rules shall also apply to section 8 companies not having share capital
Telangana (compa- nies having share capital other than section 8)	20	500	0.15% of the authorized capital subject to a minimum of Rs.1000/- and a maxi- mum of Rs.5 lakhs	These rules shall also apply to section 8 companies having share capital.  Stamp rule for SH-7 implies that the maximum limit of Rs. 5 Lakhs shall be cal- culated every time there is any increase in share capital, even if the company has already paid Rs. 5 Lakhs of stamp duty.
Telangana (compa- nies not having share capital other than section 8)	20	500	1000	These rules shall also apply to section 8 companies not having share capital
Bihar (Section 8 companies)	20	NIL	NIL	
Jharkhand (Section 8 companies)	5	NIL	NIL	
Jammu and Kashmir (Section 8 companies)	10	NIL	NIL	
Tamil Nadu (Section 8 companies)	20	NIL	NIL	

<i>Name of state/ union territory</i>	<i>INC-2/ INC-7/ INC-29</i>	<i>Amount in Rupees</i>		
		<i>MoA</i>	<i>AoA</i>	<i>Remarks</i>
Puducherry (Section 8 companies)	10	NIL	NIL	
Assam (companies having share capital other than section 8)	15	200	310	These rules shall also apply to section 8 companies and companies not having share capital other than section 8
Meghalaya (companies having share capital other than section 8)	10	100	300	These rules shall also apply to section 8 companies and companies not having share capital other than section 8
Manipur (companies having share capital other than section 8)	10	100	150	These rules shall also apply to section 8 companies and companies not having share capital other than section 8
Nagaland (companies having share capital other than section 8)	10	100	150	These rules shall also apply to section 8 companies and companies not having share capital other than section 8
Tripura (companies having share capital other than section 8)	10	100	150	These rules shall also apply to section 8 companies and companies not having share capital other than section 8
Arunachal Pradesh (companies having share capital other than section 8)	10	200	500	These rules shall also apply to section 8 companies and companies not having share capital other than section 8



Name of state/ union territory	INC-2/ INC-7/ INC-29	Amount in Rupees		
		MoA	AoA	Remarks
Mizoram (companies having share capital other than section 8)	10	100	150	These rules shall also apply to section 8 companies and companies not having share capital other than section 8
Kerala (companies having share capital other than section 8)	25	1000	For Companies having Authorized Capital up to Rs.10 Lakhs - Rs. 2,000/-For Companies having Authorized Capital above Rs. 10 Lakhs and up to Rs. 25 Lakhs- Rs. 5,000/-For Companies having Authorized Capital above Rs. 25 Lakhs -0.5% of the Authorized Capital	These rules shall also apply to section 8 companies having share capital.
Kerala (companies not having share capital other than section 8)	25	1000	2000	These rules shall also apply to section 8 companies not having share capital
Lakshadweep (companies having share capital other than section 8)	25	500	1000	These rules shall also apply to section 8 companies and companies not having share capital other than section 8
Madhya Pradesh (companies having share capital)	50	2500	0.15% of authorized capital subject to minimum of rupees 5000	

Name of state/ union territory	INC-2/ INC-7/ INC-29	Amount in Rupees		
		MoA	AoA	Remarks
			and maximum of Rupees 25 lakh of stamp duty.	
Madhya Pradesh (companies not having share capital)	50	2500	5000	
Chhattisgarh (Section 8 companies)	10	NIL	NIL	
Rajasthan (companies having share capital other than section 8)	10	500	0.5% of authorised capital	These rules shall also apply to Section 8 companies having share capital  Stamp rule for SH-7 implies that the maximum limit of Rs. 25 Lakhs shall be calculated every time there is any increase in share capital, even if the company has already paid Rs. 25 Lakhs of stamp duty.
Rajasthan (companies not having share capital other than section 8)	10	500	500	These rules shall also apply to Section 8 companies not having share capital
Punjab (Section 8 companies)	25	NIL	NIL	
Himachal Pradesh (Section 8 companies)	3	NIL	NIL	
Chandigarh (Section 8 companies)	3	NIL	NIL	
Uttar Pradesh (Section 8 companies)	NIL	NIL	NIL	These rules shall be applicable only to section 8 companies not having share capital.

<i>Name of state/ union territory</i>	<i>INC-2/ INC-7/ INC-29</i>	<i>Amount in Rupees</i>		
		<i>MoA</i>	<i>AoA</i>	<i>Remarks</i>
Uttarakhand (Section 8 companies)	Nil	Nil	Nil	These rules shall be applicable only to section 8 companies not having share capital.
West Bengal (Section 8 companies)	10	NIL	NIL	
Karnataka (Section 8 companies)	20	NIL	NIL	
Gujarat (section 8 companies)	20	NIL	NIL	
Dadra and Nagar Haveli (section 8 companies)	1	NIL	NIL	
Goa (section 8 companies)	50	NIL	NIL	
Daman and Diu (section 8 companies)	20	NIL	NIL	
Andaman and Nicobar (section 8 companies)	20	NIL	NIL	

**Stamp duty rules for FC-1**

Rs. 100 for Delhi and Rs. 50 for all other states/ UTs.

*Disclaimer*

All initiatives have been taken to make the database in respect of stamp duty as authentic as possible. However, users are requested to refer the relevant Stamp Act/ Rules of the concerned State/ Union Territory Government for the authentic version. Along with the above, Ministry of Corporate Affairs or its service provider shall not be responsible for any loss to any person caused by any shortcoming, discrepancy or inaccuracy in the information regarding such database. Any discrepancy found in this regard may be brought to the notice of office of respective Registrar or MCA immediately.

\*Source MCA Website.

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