

Section 8 Companies: An overview

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Introduction

A Section 8 company, also known as a not-for-profit company, is a type of organization in India that is formed for the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment, or any other charitable purpose. Section 8 companies are established with the primary objective of promoting charitable activities and not for earning profits.

Difference between a section 8 company, non-profit entity and non-corporate entity

Feature	Section 8 Company	Non-Profit Entity	Non-Corporate Entity
Formation	Formed under Section 8 of the Companies Act, 2013.	Can be formed under a variety of laws	Can be formed under a variety of laws
Purpose	Social welfare, arts, commerce, science, research, education, sports, charity, environmental protection, or any other such objects.	Can have any purpose that is not for the purpose of making a profit.	Can have any purpose.
Legal status	Company.	Broad term for any organization that is not formed for the purpose of making a profit.	Organization that is not incorporated under the Companies Act, 2013.
Distribution of Profits	Cannot distribute profits to shareholders	Profits must be used to further the organization's charitable objectives	Profits may be distributed to members
Limited liability	Shareholders have limited liability.	Members may or may not have limited liability.	Members do not have limited liability.
Tax benefits	Exempt from income tax on profits.	May be exempt from income tax on profits.	May not be exempt from income tax on profits.

Procedure for incorporating section 8 companies:

STEP 1: APPLY FOR THE DESIRED NAME

The first step in incorporating a company is for reserving the name of the proposed company in part-A of SPICe+ form. The name of Section 8 Company shall include the words Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral Trust, etc.

As substituted by Companies (Incorporation Amendment) Rules 2020, licence for Sec 8 companies shall be issued to SPICe+ form. Form INC 12 shall not be filed for obtaining licence for a new Sec 8 company.

STEP 2: APPLY FOR A DIGITAL SIGNATURE CERTIFICATE (DSC)

It will be used for electronically signing the forms by proposed directors and proposed members respectively.

STEP 3: FILL THE APPLICATION FOR INCORPORATION (SPICe+ Form)

- i) Within 20 days of name approval, fill the Part-B of SPICe+ (INC-32) which will contain all the detail related to incorporating company like number total number of directors and members, Authorized share capital, paid-up capital, number of shares hold by members, company registered address detail, directors and member detail with the following attachments:
 - MOA as per INC -13
 - AOA
 - Declaration in form INC-9 from all subscribers and first directors. This is auto generated after filing of SPICe + Part B.
 - Consent to act as Director
 - Proof of identity of all subscriber and first directors
 - Copy of self-attested PAN card
 - Proof of residence of all subscriber
 - Declaration as per Form INC-14 by the professional
 - Declaration as per Form INC-15 by the applicant
 - Estimated income and expenditure for next three years
 - Proposed business plan and activities to be undertaken
- ii) Fill form required for EPFO and ESIC registration with detail.
- iii) Application for Goods and services tax Identification number (AGILE form)

STEP 4: CERTIFICATE OF COMMENCEMENT OF BUSINESS

Once the application of incorporation of the company is approved and the Certificate of Incorporation is issued by the ROC, the Company shall file for seeking approval for commencing the business within 180 days from the date of incorporation of the Company.

Winding-up

The fast track exit mode for declaration of Sec 8 company as defunct is not available. The ROC may *suo motto*, as per process specified under Sec 248 of the Companies Act 2013

strike off the name of the Sec 8 Company. However, in case the fast track mode of winding up is sought, then the licence of the Sec 8 company can be surrendered by changing the business into a non-Sec 8 company and thereafter the application for strike off may be made.

On the winding up or dissolution, if there remains any asset after the satisfaction of its debts and liabilities, that may be transferred to another Section 8 company having similar objects, subject to such conditions imposed by the Tribunal, or may be sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed under Section 224 of the Insolvency and Bankruptcy Code, 2016.

Taxation

The profits are taxed at the rate of 30% which is at par with the other companies. However, if it is registered under section 12AA of the Income Tax Act, 1961 then the profit is completely exempt and no tax is levied on the company.

Consequences of Non-compliance with section 8 company regulations:

Revocation of Section 8 License by Central Government

The Central Government has the power of revocation of the license granted to any company under Section 8 of Companies Act, 2013 through an order to that effect:

- if the company contravenes any of the requirements of section 8 of Companies Act, 2013 or any of the conditions subject to which a license is issued,
- the affairs of the company are conducted fraudulently or in a manner violate the objects of the company
- prejudicial to public interest

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.

Where a licence is revoked, the Central Government may direct that the company to be wound up under the Companies Act or amalgamated with another company registered under Section 8 of Companies Act, 2013, after giving company a reasonable opportunity of being heard.

Penalty

If the company makes default in complying with any of the requirements laid down under this section, it shall be punishable with fine which shall be not less than ten lakh rupees which may extend to one crore rupees and the director and every officer who is in default shall be punishable with fine which shall not be less than twenty-five thousand but which may extend to twenty-five lakh rupees.

Conversion of Section 8 Company to any other form {as per Rule 21 of The Companies (Incorporation) Rules, 2014}

STEP 1: The company shall pass a special resolution at a general meeting for approving such conversion.

STEP 2: The explanatory statement annexed to the notice convening the general meeting shall mention details along with the reasons for opting for such conversion.

STEP 3: 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 MGT-14 along with the fee.

STEP 4: File an application in Form 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 sub-rule (2) of rule 22 of The Companies Incorporation Rules, 2014

STEP 5: A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.

However, Section 8 companies cannot be converted to One Person Companies (OPCs).

PROCEDURE FOR CONVERSION OF EXISTING COMPANIES INTO SECTION 8 COMPANIES

STEP 1: Amend the MOA and AOA of the company.

STEP 2: Make an application for reservation of name through RUN.

STEP 3: Make application in Form No. RD-1 for seeking the approval for conversion of existing Company to section 8 company along with this Form INC-12 application for granting a license under section 8 company.

STEP 4: Within a week of making such application, the Company shall get a notice published in:

- Vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is situated; and
- English newspaper in English language circulating in that district.

- The copy of the publications as made shall be submitted to the Registrar as well.
- The Registrar shall, after considering the objections, if any, received by it within thirty days from the date of publication of notice and in its discretion, decide whether the license should or should not be granted.

EXEMPTIONS AND RELIEFS AVAILABLE TO SECTION-8 COMPANIES UNDER COMPANIES ACT, 2013

- 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 Act.
- A general meeting may be called by giving notice of not less than 14 clear days instead of 21 clear days.
- A Section 8 Company can hold at least one meeting within every six calendar months instead of holding four meetings a year.
- Recording of minutes of General Meetings, Board Meeting and other resolutions is not applicable on a Section 8 Company. However, the minutes of meetings may be recorded within 30 days of conclusion of the meeting in cases where the Company's articles provide for confirmation by way of circulation of minutes.
- A firm can even be a member of a Section 8 Company.
- Section 149(1) of the Act shall not apply to Section 8 Company. Accordingly, a Section 8 Company is not required to appoint an Independent Director. Further, the Audit Committee of a Section 8 Company shall also not require to have Independent Directors as member of its Board.
- Section 8 Companies are not required to appoint a qualified CS professional as its Company Secretary.
- It is exempted from applicability of secretarial standards as well.
- Section 178 of the Act is not applicable to Section 8 Company. Accordingly, Section 8 Companies are not required to have a Nomination and Remuneration Committee and nor a Stakeholders Relationship Committee.
