COMPANIES INCORPORATED U/S. 25 OF THE COMPANIES ACT, 1956.

AS PER THE LAW :

(1) Where it is proved to the satisfaction of the Central Government that an association—

(*a*) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and

(*b*) intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,

the Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the words "Private Limited".

Thus as per above there are three criteria to be matched to incorporate a company as Sec. 25 Company

1) Its objects should be only to promote commerce, art, science, religion, charity or any other useful object.

2) It should intend to apply its profits or other incomes only in promoting its objects; and

3) Central government should have granted a license to such a company recognizing them as such

WHAT WE UNDERSTAND IN LAYMAN LANGUAGE :-

Objects of the company

The main instrument of any section 25 company is the memorandum and articles of association, wherein the aims and objects and mode of management of the company are mentioned. The objects of such company include promotion of Commerce, Art, Religion, and Charity etc.

The objects clause can be changed only with the prior sanction of Central Government. The area of operation is not restricted to the particular region in which the company is registered.

Application of profit

The important condition in case of company registered u/s 25 is that the income and property of the company is to be wholly applied for the promotion of the object as provided in its Memorandum of Association and no profit can be paid directly or indirectly, by way of divided or bonus to the members of the company.

Management of the Company

Minimum seven individuals are required to register a company under section 25 of the Act. Founder members of the company can be Directors of the company. 1/3rd of the Directors liable to retire have to retire by rotation every year. Remuneration is payable to the Directors as per schedule 13 of the Companies Act. But no prior permission of Central Govt. is required unless it crosses a certain limit.

The set up of the company is democratic. Every member on payment of fees enjoys voting rights. Every member has a right to demand the accounts and annual report.

Provision of Companies Act regarding holding meetings, keeping minutes, maintaining Registers and filing compliances are to be strictly followed.

Maintenance of accounts

The provisions of the Companies Act, 1956 regarding maintenance of accounts apply to the company registered under section 25 of the Act. Hence the annual accounts need to be audited and the Profit and Loss account should be prepared in the format prescribed under Schedule VI of the Act. Companies (Auditor's Report) order, 2003; by is clause 1(2)(iii) exempts a company licensed to operate under section 25 of the Companies Act.

Intercorporate loan and advances

Section 372A of the Companies Act, govern the provisions of intercorporate loans and advances. If a section 25 company has share capital, provisions of section 372A of the Act apply to such company as they apply to any other company. If the section 25 company does not have share capital, it will still have free reserves and percentage under section 372A is to be computed in relation to such free reserves.

PRIVILEGES AND ADVANTAGES

The section 25 company enjoys all advantages that any other limited company registered under companies act enjoys and yet they are conferred the privilege of not adding the words ‘limited’ or ‘private limited’.

The officers and members enjoy limited liability and total immunity from the personal liability. The governing body of the company normally controls the admission and even a partnership firm can be the member.

But apart from these advantages there are some specific privileges conferred upon them that distinguish them from other companies. These privileges are in nature of exemptions from some provisions of the companies act viz 147, 160(1)(aa) 166(2), 259, 264(1), 280, 282, 303(2) fully and partly from the provisions of sections 2(45), 171(1), 193, 209(4A), 219, 257, 285, 287, 292, 299 and 301.

- **Minimum Share Capital**: Section 25 Companies have been exempted from this requirement regarding minimum share capital by insertion of sub-section (6) through Amendment Act of 2000. As such they can be registered even if they have share capital les than the statutory minimum.
- **Publication of Name**: a section 25 company has been exempted from the provisions of section 147 and as such is not required to mention its name and address as required in case of all other companies.
- **Time and Place of AGM**: Section 25 Company has been exempted from this provision provided the time place and date of the AGM has been decided before hand by the Board of Directors having regard to the direction given by the company in a General Meeting. As such they are free to determine the date, place and time of its AGM according to their convenience and feasibility
- **Notice of AGM**: Section 25 Company has been given some relief in this regard by allowing them to hold an AGM after giving a notice of 14 days length instead of 21 days as required by section 171(1). Therefore they can call an AGM at a short notice of 14 days instead of 21 days.
- **Maintaining of Books of Accounts**: Every company is required by section 209(4-A) to maintain books of accounts relating to a period of eight years immediately preceding current year along with its vouchers. However a Section 25 Company is required to maintain books of account relating to a period of only four years instead of eight years immediately preceding the current year.
- **Service of Copies of Certain Documents**: a Section 25 Company is allowed to send the required documents at least fourteen days before the date of meeting instead of 21 days [vide Notification No. GSR 73 dated 30-12-1965].
- **Right of Persons other that Retiring Director to stand for Directorship**:. If the Articles of the Section 25 Company provide for election of the Directors by ballot system then the provisions of section 257 will not apply to such a company and as a result a person who is not a retiring director and is intending to stand for directorship will not have to follow the procedure laid down by section 257. But if the Articles of the company do not provide for election of director by ballot then section 257 will have to be complied in whole.
- **Increase in Number of Directors** Section 25 Companies are exempted from section 259 and are thus free to increase the number of its directors without seeking approval of central Government[vide Notification No. 2767, dated 5-8-1964].

Unlike a Charitable Trust no administrative charges are to be paid for any donation received by the Organization. The company need not obtain any permission from any authority for sale of immovable property.

Over and above these advantages, section 25 company is also eligible to claim exemption u/s 11 of the Income Tax Act, 1961.

OBLIGATIONS

- A Section 25 Company has to ensure that its profits and all other incomes are utilized only for the purpose of promoting its objects and not for any other purpose.
- It should also ensure that its profits are not distributed as dividend among its members.
- Section 25 Company cannot alter its objects clause in its Memorandum without seeking the written approval of central government
- If the Central Government has imposed some conditions and regulations upon the company for granting a license under section 25 then such a company is bind by such conditions and has to ensure adequate compliance with them.
- Section 25 Company is regarded as a ‘company’ within the meaning of the Income Tax Act, 1961 and as such its income is taxable according to the applicable rates similar to those applying to other companies.
- If an existing company obtains a license under section 25 it has to ensure that its objects are confined to those mentioned in section 25 itself and if not make proper alteration to its memorandum and articles.

COMPARISON BETWEEN

SECTION 25 COMPANY AND A TRUST

	Section 25 Company	Trust
(1)	Governed by Companies Act, 1956	Governed by Bombay Public Trusts Act, 1950
(2)	Central Govt. Permission through the Regional Director necessary	Not necessary
(3)	Under jurisdiction of Registrar of Companies	Under jurisdiction of Charity Commissioner
(4)	Memorandum and Articles of Association as main document	Trust Deed as main document
(5)	No stamp paper necessary for memorandum and articles of association	Trust deed to be executed on non judicial stamp paper
(6)	Objects clause can be altered with prior sanction of Central Govt.	Permission of Charity Commissioner required to change objects of the Trust
(7)	No permission necessary from any authority for sale of immovable property	Prior permission of Charity Commissioner required
(8)	No administrative charges to be paid for any donation received. No charges to be paid on donation received towards corpus.	2% of the donation received are to be paid as administrative charges to the Charity Commissioner.
(9)	Minimum seven members required	Minimum two trustees required

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