

PROCEDURE FOR INCORPORATION OF SECTION 25 (NON-PROFIT MAKING COMPANY)

- **WHAT IS A NON-PROFIT MAKING COMPANY**

Any association desirous of being incorporated as a company with limited liability, without the addition of the word “Limited” or the words “Private Limited” as the case may be, shall make an application in writing to the Registrar of Companies (formerly Regional Director) on behalf of such company/proposed company for grant of licence under section 25 of the Companies Act, 1956.

Section 25 companies are those companies which are formed for the sole purpose of promoting commerce, art, science, religion, charity or any other useful object and have been granted a licence by the Registrar of Companies (formerly Central Government) recognizing them as such. Such companies should intend to apply its profits, if any or other income only in **promoting its objects** and must also **prohibits payment of dividend to its members**. Thus there are three criteria for determining whether a particular company is section 25 company or not:

- (a) The object for which the company is proposed to be formed or already formed is to promote commerce, art, science, religion, charity or any other useful object;
- (b) Profits, if any, earned in carrying out the object and other income are proposed to be applied only for promoting its objects; and
- (c) The company intends to prohibit the payment of dividend to its members.

- **OBJECTIVE OF SECTION 25**

The objective of section 25 of the Companies Act, 1956 is to provide special benefits and privilege to such companies, which are formed for the purpose of:

- (a) Promoting commerce, art, science, religion, charity or any other useful object, and
- (b) Apply its profits and incomes for promotion of its objects and prohibit distributing them as dividends.

Such associations enjoy their standing as a company and at the same time are not required to suffix the words “Private Limited” or the word “Limited” as required under section 13(1)(a).

- **APPLICATION FOR ISSUE OF LICENCE**

The procedure for forming a section 25 company and for conversion of an existing company into a section 25 company are provided in the Companies Regulation, 1956 and annexure thereto. The power under section 25 has been delegated from the Regional Director to Registrar of Companies of the Ministry of Corporate Affairs.

1. An application has to be made for availability of name to the Registrar of Companies, which must be made in the prescribed e-Form 1A, together with a fee of Rs. 1000. It is advisable to suggest a choice of three other names by which the company will be called, in case the first name which is proposed is not found acceptable by the ROC.
2. Once the availability of name is confirmed, the application in e-Form 24A as prescribed for grant of permission under the section is required to be made electronically to the concerned Registrar of Companies (ROC) (Mumbai/Noida/Kolkata/Chennai) (from March 18, 2011 by Notification power and function of RD shifted to ROC), in whose jurisdiction the registered office of the company is proposed to be situated. The application should be accompanied by the following documents:
 - (i) Draft of the Memorandum & Articles of Associations. (In triplicate)
 - (ii) Details such as name, address, occupation and descriptions of the promoters and first directors.(In triplicate).
 - (iii) A declaration as per annexure V of Companies Regulation, 1956.
 - (iv) Declaration by advocate of the Supreme Court or High Court, attorney or pleader entitled to appear before a High Court, or a Company Secretary or Chartered Accountant in whole time practice that the MOA & AOA have been drawn in conformity with the provisions of the Act.
 - (v) A list of the names, address, descriptions and occupations of its directors and of its managers or company secretary, if any, together with the names of companies, associations and other the directors of the applicant company are directors or hold responsible positions, if any, with the descriptions of the positions so held.
 - (vi) Statement of the grounds on which application is made.
 - (vii) A statement showing in details the asset and the liabilities of the association as on date of application or within seven days of that date;
 - (viii) An estimate of the future annual income and expenditure of the proposed company, specifying the sources of income and the objects of the expenditure;
 - (ix) If any of the above documents is not in English or Hindi, then a translation of such documents in English or Hindi.

3. Any company registered under the Act as a limited company, which is desirous of being incorporated without the addition to its name of the word “Limited” or the words “Private Limited” shall make an application to the Registrar of Companies (ROC) (Mumbai/Noida/Kolkata/Chennai) (from March 18, 2011 by Notification power and function of RD shifted to ROC), in whose jurisdiction the registered office of the company is proposed to be situated accompanied with following documents:
 - (i) Draft of the Memorandum & Articles of Associations. (In triplicate)
 - (ii) A list of the names, address, descriptions and occupations of its directors and of its managers or company secretary, if any, together with the names of companies, associations and other the directors of the applicant company are directors or hold responsible positions, if any, with the descriptions of the positions so held.
 - (iii) Statement of the grounds on which application is made.
 - (iv) A statement showing in details the asset and the liabilities of the association as on date of application or within seven days of that date;
 - (v) An estimate of the future annual income and expenditure of the proposed company, specifying the sources of income and the objects of the expenditure;
 - (vi) Three copies of the Balance-sheet, Profit & Loss A/c, Annual Report and Audit Report of preceding two financial year;
 - (i) If any of the above documents is not in English or Hindi, then a translation of such documents in English or Hindi
4. Application for granting of licence should be made in e-Form 24A to the ROC.
5. The Central Government has prescribed a fee of Rs. 500 only for an application under section 25 of the Act in terms of Companies (Fees on Application) Rules, 1999.

- **PUBLICATION OF NOTICE**

The applicant shall, within a week from the date of making the application to the concerned Regional Director, publish at their own expense, a notice of the application made to the Regional Director and a certified copy of the same shall be sent forthwith to the Regional Director. Such notice is not required by Notification issued on May 09, 2011 vide GSR 368(E) on or after such publication of Notification.

- **GRANTING OF LICENCE**

The Registrar of Companies (ROC) (Mumbai/Noida/Kolkata/Chennai) (from March 18, 2011 by Notification power and function of RD shifted to ROC), in whose jurisdiction the registered office of the company is proposed to be situated shall, after considering the

objections, if any, received by it within a time fixed thereof in the notice aforesaid, and after consulting any authority, department or Ministry, as it may, in its discretion, decide, determine, whether the licence should or should not be granted.

The Registrar of Companies (ROC) may direct the company to insert in its memorandum or in its articles such conditions of the licence as may be prescribed by the Regional Director in this behalf.

- **EFFECT OF REGISTRATION**

After receipt of the licence from the Registrar of Companies (ROC), the association may thereupon be registered u/s 25 of the companies Act, 1956. On registration of a company accordingly with limited liability, it shall enjoy all the privilege and exemption under the Act and the word "Limited" or the words "Private Limited" will not be included in the name of the such company.

- **CERTIFICATE OF INCORPORATION**

After receiving the licence/approval, an application is to be made to the concerned Registrar of Companies (ROC) along with the following documents;

- (i) Printed copy of MOA & AOA
- (ii) The licence granted by Regional Director
- (iii) E-Form-1, 18, and 32

The ROC after scrutinizing the requisites documents, shall issue a certification of Incorporation in pursuance of section 34 of the companies Act, 1956 in Form 1.

Regards

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