Prepared by:

CS Ankur Garg
https://www.facebook.com/#!/ankur.gargcs

Incorporation Process of Non-Profit making Company Section 8

The concept of non-profit making company is quite old in India. In erstwhile Companies Act, 1956 it was regulated by Section 25 and that is why it was popular as **Section 25 Company**. However in Companies Act 2013 provisions related to non-profit making company are given in Section 8 read with Rule 19 and 20 of Companies (Incorporation) Rules, 2014. There may be 3-4 forms of a Charitable Organization in India and such organization can be formed/registered as trusts, societies, or as a non-profit company incorporated under Section 8 of the Companies Act, 2013.

Through this article we shall discuss the basic provisions and procedure for incorporation of a non-profit making company as given in Section 8 read with Rule 19 and 20 of Companies (Incorporation) Rules, 2014.

Meaning of Non-profit making Company
A Non-profit making Company is a Company which:

(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.

Formation of companies with charitable objects

As per section 8 of Companies Act 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons want to register themselves under section 8 as a limited company for the furtherance of above mentioned objects, the Central Government may, by licence issued in prescribed manner 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.

Procedure for registration of Non-Profit making Company

Procedure for getting License under section 8 for new companies with charitable objects is given in rule 19 of Companies (Incorporation) Rules, 2014. Please find below the process for registration of non-profit making Company under Companies Act, 2013:

1. <u>Obtain Digital Signatures</u>

Nowadays various document prescribed under the Companies Act, 2013, are required to be filed with the digital signature of the Managing Director or Director or Manager or Secretary of the Company, therefore, it is compulsorily required to Obtain a Class II Digital Signature

Prepared by:

CS Ankur Garg
https://www.facebook.com/#!/ankur.gargcs

Certificate from authorized DSC issuing Company for at least one director to sign the E-forms related to incorporate like form INC.1 and other documents.

2. Obtain Director Identification Number [Section 153]

As per 153 of the Companies Act, 2013, every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number in form **DIR.3** to the Central Government in such form and manner and along with such fees as may be prescribed.

Therefore, before submission of e-Form **INC.1** for availability of name, all the directors of the proposed company must ensure that they are having DIN and if they are not having DIN, it should be first obtained.

3. Name availability for proposed company

As per section 4(4) read with **Rule-9** of Companies (Incorporation) Rules, 2014, application for the reservation/availability of name shall be in Form no. **INC.1** along with prescribed fee of Rs. 1,000/-. In selection of Company name should be in accordance with name guidelines given in **Rule-8** of Companies (Incorporation) Rules, 2014. The name will be valid for a period of 60 Days from the date on which the application for Reservation was made.

Note: MCA has prescribed certain rules for name availability so it is advisable to check guidelines for the same before applying for name. Refer **Rule-8** of Companies (Incorporation) Rules, 2014. Kindly check my article titled "Guidelines for selection of Name of the Company" available at the link below:

Guidelines for selection of Name of the Company

After approval of name ROC will issue a Name availability letter w.r.t. approval for availability of name for a proposed company.

4. Preparation of the Memorandum of Association (MOA) and Articles of Association (AOA)

Drafting of the MOA and AOA is generally a step subsequent to the availability of name made by the Registrar. It should be noted that the main objects should match with the objects shown in e-Form **INC.1**. These two documents are basically the charter and internal rules and regulations of the company. Therefore, it must be drafted with utmost care and with the advice of the experts and the other object clause should be drafted in a very broader sense. The memorandum of association of the proposed company shall be in **Form No.INC.13.**

5. License under section 8 for new companies with charitable objects

A person or an association of persons 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

Prepared by:

CS Ankur Garg
https://www.facebook.com/#!/ankur.gargcs

the case may be, the words “Private Limited”, shall make an application in **Form No.INC.12,** along with the prescribed fee, to the Registrar for a license under sub-section (1) of section 8.

Main attachments of Form INC.12 would be as follows:

(a) The draft Memorandum of Association as per form no. INC.13 of the proposed company.
(b) The draft Articles of Association of the proposed company.
(c) 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;
(d) The declaration by each of the persons making the application in **Form No. INC.15**.
(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;

There are few other attachments for form INC.12 but they are not compulsory. However the above 5 attachments are compulsory to incorporate a Non-profit making company.

DUTY OF REGISTRAR TO SCRUTINISE THE DOCUMENTS

If after filling the Requisite forms for incorporation with the Registrar of Companies along with fees, ROC is satisfied with the contents of the documents filed, ROC will issue the Licence in form No. INC.16 under section 8(1) read with **rule 19** of Companies (Incorporation) Rules, 2014. Such company registered under section 8 shall enjoy all the privileges and be subject to all the obligations of limited companies.

Other statutory provisions related to Non-Profit making Company

1. **Firm as a member of Non-Profit making Company:** As per section 8(3) a partnership firm may become a member of the non-profit making company registered under section 8. Membership of such firm shall cease upon dissolution of the firm. However, partners of the dissolved firm may continue to be the members of such company in their individual capacity.

2. **License for existing companies under Section 8:** There is also a provision for conversion of existing Companies into a Non-profit making company under section 8 read with Rule 20 of Companies (Incorporation) Rules, 2014. Likewise a Non-profit making company can also be converted into any other Company by following the procedure given in Rule 21 and 22 of Companies (Incorporation) Rules, 2014. We shall discuss these procedures in some other article.

3. **No Change in AOA and MOA:** 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.

Prepared by:

CS Ankur Garg
https://www.facebook.com/#!/ankur.gargcs

4. **Revocation of Licence by Central Government:** As per section 8(6), the Central Government may, by order, after giving the company a reasonable opportunity of being heard, 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 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.

5. **Winding up of Company:** As per section 8(7), where a licence is revoked under sub-section (6), the Central Government may, by order, after giving the company a reasonable opportunity of being heard, 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.

6. **Penalty for violation of Section 8:** If a company makes any default in complying with any of the requirements laid down in section 8, 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 (10,00,000) rupees but which may extend to one crore (1,00,00,000) 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 (25,000) thousand rupees but which may extend to twenty-five (25,00,000) lakh rupees, or with both:

Disclaimer:

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am hopeful that this write up would be of some help w.r.t. your professional working and endeavors under Companies Act, 2013. Kindly share your opinion.

Thanks
CS Ankur Garg
Connect through Facebook

Sept 18, 2014