

NGO/SECTION 8 COMPANY FORMATION



We all want a happy and healthy surroundings but due to over populations, lac of facilities, increased in number of infectious disease or may other reasons are there which affect our world.

Volunteers take initiatives to spread love, unity and give message of service and unite in the form of a company known as Section 8 Company.

These kinds of Companies/association of person registered as a Non-Profit Organization (NPO) with a motive of promoting arts, commerce, education, charity, protection of environment, sports, science, research, social welfare, religion and intends to use its profits (if any) or other income for promoting these objectives.

As per section 8 of Companies Act, 2013-

An individual or an association of individuals are eligible to be registered as Section 8 Company if it holds below-mentioned intentions or objectives. The objectives have to be confirmed to the satisfaction of the Central Government.

- When the company intends to promote science, commerce, education, art, sports, research, religion, charity, social welfare, protection of the environment or alike other objectives;
- When the company holds an intention to invest all the profits (if any) or any other income generated after incorporation in the promotion of such objects only;
- When the company does not intend to pay any dividend to its members.

Incorporation of a Section 8 Company

Section 8 Companies can be incorporated by reserving names in part A of Spice+ followed part B of Spice+ form or by directly filing Spice+. License No. shall be given to section 8 company during the incorporation.

PART A: Name Reservation, the proposed Company can file the name application separately for reserving the name for 20 days and afterwards file for Company registration or can fill part A alongwith the part B and file for company registration.

According to the provisions of Companies Act, 2013 name of the Company shall not be similar or nearly resemble. Once you select the name check it with Ministry at <http://www.mca.gov.in/mcaportal/show>

[CheckCompanyName.do](http://ipindiaonline.gov.in/tmrpublicsearch/frmmain.aspx) and one must also check with trademark at <http://ipindiaonline.gov.in/tmrpublicsearch/frmmain.aspx>

Please be noted

1. When you will submit name application, system will show that name is available in maximum cases. But in actual is not same, the ultimate right to approve the name lies with CRC Officials.
2. There are only two opportunities provided by MCA including first one in which name is being applied.
3. Approved name remains valid only for 15 days.

PART B: Company Registration, it contains all requires details for registering the Company i.e. details of Directors, shareholders, registered office address of the Company, Authorised and paid up capital and other requisite details.

Digital Signature Certificates (DSC): the Directors/subscribers to MOA/AOA need to obtain Class III digital signature certificates from authorized agency and affix DSC while filing form with the ROC, GST filing and ITR filings.

Once this web form is filled, needs to attach the required documents and upload the same with the digitally signed linked forms in following sequence:

Spice Part B

Spice MOA

Spice AOA

AGILE PRO

Spice INC-9

Once the forms are uploaded with Ministry and requisite fee is paid, the Ministry shall

provide the following registrations at the time of approval:

Director Identification Number(DIN)

Company Incorporation Certificate

PAN Number

TAN Number

GSTIN Number

Bank Account Number

EPFO Registration

ESIC Registration

Checklists/Documents required for incorporating Section 8 Company

In order to register your company as Section 8, you should keep the following documents ready in a proper sequence:

- Copy of PAN (Permanent Account Number) of all Directors & Shareholders as an identity proof;
- Copy of a Driving License or Aadhaar Card or Passport or Election ID card, etc., as an address proof;
- Recent passport size photographs of all the Directors and Shareholders;
- The Utility bills of the registered office not older than 2 months;
- Rent agreement, in the case the registered office is on rent;
- NOC (No-Objection Certificate) from the Landlord;
- Details of the Directorship of the directors in any other companies or LLP, if any.

Requirements of Section 8 Company

1. It is incorporated 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. A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

3. Total Number of Board Meetings-As per the exemption notification read with section 173(1) and 174(1), Section 8 companies must have at least one meeting within a period of 6 calendar months.

4. There is absolute prohibition on distribution of any profits made by the Section 8 Company. No profit can directly or indirectly be distributed among any of the members or shareholders as the case may be. Any income or profit, if any that arises to such a company has to be utilized in the way as prescribed under the Act. Section 8 company is not entitled to any share in profits or income of such subsidiary.

Exemption to Section 8 Company

MCA vide notification dated 5th June, 2015 exempted Section 8 companies from complying with certain provisions of the Companies Act, 2013 ("Act, 2013" or "Act" or CA 2013) as mentioned hereunder subject to the condition that the company will ensure protection of shareholder's interests.

1. Section 8 companies need not appoint a qualified professional as its company secretary.

2. Since the requirement of having a minimum paid-up share capital for incorporating a private or a public company has been done away with vide the Companies (Amendment) Act, 2015, a Section 8 company also need not comply with the same.

3. Section 8 companies can appoint more than fifteen directors without passing a special resolution. Section 8 company need not appoint an independent director.

4. Further, since there is no requirement to appoint an independent director, all consequential sub-sections of section 149 viz sub-sections (5), (6), (7), (8), (9), (10), (11), clause (i) of sub-section (12) and sub-section (13) of section 149, section 150 and proviso to section 152(5) relating to independent directors shall also not apply to section 8 company

5. Furthermore, for the above mentioned reason, the Audit Committee of a Section 8 company shall not require independent directors as its members.

6. Section 8 companies need not have a nomination and remuneration committee nor a stakeholders relationship committee.

7. Pursuant to the proviso to section 96(2) of the Act, a Section 8 company can hold its annual general meeting on a National Holiday, beyond business hours and at a place other than a place which is in the same city, town or village where the registered office of the company is situated subject to any directions in this regard given by the company in a general meeting.

8. Pursuant to Section 101(1) of the Act, a Section 8 company can call a general meeting by giving atleast fourteen days notice instead of twenty-one days notice. Accordingly, the documents such as financial statements along with the auditor's report etc. which are to be laid before the general meeting as per section 136(1) of the Act shall be sent to every person entitled to receive such documents not less than fourteen days before the meeting instead of twenty-one days.

9. Section 118 of the Act dealing with the preparation and recording of minutes of proceedings of minutes of meeting of members and/or board of directors of a company shall not apply to a Section 8 company except that the minutes must be recorded within thirty days of the meeting where the articles of association of the company provides for confirmation of minutes by circulation.

That is to say, a Section 8 company, unless the articles so provide, need not prepare and record the minutes within thirty days of the meeting Except for the said reservation of Section 118, a Section 8 company need not have to comply with the Secretarial Standard with respect to general and Board meetings i.e. SS-1 and SS-2 respectively.

10. Section 160 of the Act dealing with right of persons other than retiring director to stand for directorship by serving a notice to the company along with deposit of one lakh rupees shall not be applicable to such Section 8 companies whose articles provide for election of directors by ballot.

11. The delegable powers of the Board to be exercised at the meeting as per subsection (d), (e) and (f) of section 179(3) may, for a Section 8 company, be decided by the board by circulation instead of at the meeting.

The resolutions for borrowing of monies, investing the funds of the company and granting loans or giving guarantees or providing security in respect of loans can be passed by circular instead of at the meeting.

12. Disclosure of interest in a contract or arrangement as per section 184(2) shall be applicable to a section 8 company 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.

13. Registers of contract and arrangements in which the directors are interested shall be maintained 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.

Consolidation of Accounts of Section 8 Company

Consolidation is a combined representation of financials of a company and its subsidiaries, joint ventures and associates. Section 129(3) of the Act, 2013 mandates the preparation of CFS in addition to Standalone Financial Statements, in case where the company has one or more subsidiaries. In case of Section 8 Company or NGO, the need for consolidation does not arise.

Thank You

CS Neha Sarpal

Sr. Executive

Blueair India(Unilever Group)

Cont:91-7053715771