

All about Section 8 Company

Companies registered under Section 8 of the Companies Act, 2013 (the Act) are special to the extent that they are specifically formed with an object to promote commerce, arts, science, sports, education, research, social welfare, protection of environment or for any such similar object. Even an existing public company or a private company or trust can be converted into a Section 8 company. Recognition as a Section 8 Company requires license from the Central Government. Alteration of objects of a Section 8 company requires prior approval of the Central Government. There is a misconception that a Section 8 company is formed 'not for profit'. However, the fact is that there is no restriction for a Section 8 company to earn profit in carrying on its objects, but it cannot distribute to its shareholders the profits earned and the profits have to be re-deployed in furthering its objects.

A perusal of the scheme of the provisions of the Act, pertaining to Section 8 companies would show that such companies mainly enjoy three major benefits under the 2013 Act as follows:

- First, such companies, whether public or private need not carry in their names the words “limited” or “private limited” though they enjoy status of a company with a limited liability.
- Second, the fee structure for registration of such companies as well as filing of documents is very concessional in nature; and
- Third, such companies do enjoy certain exemptions and privileges from various provisions of the Act as granted under the Notification No. GSR 466(E) dated 05th June, 2015 and the Notification No.GSR 584(E) dated 13th June 2017 issued by the Ministry of Corporate Affairs.

Advantages of Section 8 Company

Distinct Identity:

Unlike a Trust or a Society, a Section 8 company is a legal entity or a body corporate with a distinct existence apart from its directors and shareholders recognised under law. It can own properties and incur debts in its own name. The artificial juridical status of a Section 8 company provides many advantages in promoting its objects and more importantly the ownership in the company can be transferred by transfer of shares and corporate restructuring schemes can be executed for merger, demerger, acquisition etc., subject however, to the terms specified in the Act.

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Liability is Limited:

Due to the limited liability status, the members of such a company have no liability towards company's debts because, the company and members are considered as separate persons in the eyes of the law and the company is recognised as an artificial juridical person. The members' liability at the best can only extend to any unpaid value of the shares they have taken. Even a partnership can be admitted as a member of a Section 8 company.

Tax Benefits:

Section 8 company can get registered under section 80G and 12A of the Income Tax Act, 1961 subject to fulfilment of applicable conditions. Thus, a Section 8 company is eligible to receive donations similar to a Trust and apply the same in furtherance of its objects. Section 8 company also enjoys stamp duty concessions for its formation and registration of property in certain States.

Establishment of Education Institutions:

Section 8 companies are permitted to start schools and colleges. In the year 2016 the Medical Council of India permitted medical colleges to be set up by companies including a Section 8 company. Education sector is one of the major sectors in which schools are predominantly owned by Section 25 companies formed under the erstwhile Companies Act, 1956 or under the Section 8 of the Act.

Exemptions enjoyed by Section 8 company under the Act:

Section 8 companies enjoy certain specific privileges which are not available to other forms of companies. The major privileges provided to Section 8 company Vide Notifications dated 05th June, 2015 and 13th June, 2017, are:

- Upon incorporation a Section 8 company is required to hold its first board meeting within 6 months of incorporation instead of one month applicable to other kinds of companies.
- Any person can be appointed as Company Secretary of a Section 8 company and such person need not be a member of ICSI
- General Meetings can be convened 14 clear days' notice instead of 21 days' notice
- Section 8 company can send a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting to its members not less than 14 before the date of the meeting.
- Unless the Articles of Association of the companies otherwise provide, recording of minutes of General Meetings, Board Meeting and other resolutions is not mandatory.
- The requirement of having minimum of 3 directors in case of Public Limited Company and 2 Directors in Private Company does not apply.
- Section 8 company, if it's a public company, is exempt from appointment of independent directors.

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- Section 8 company is exempt from constituting any committees of the Board like audit committee, nomination and remuneration committee etc.
- Directorship in Section 8 companies is not counted for limitation on number of directorship (not more than 20 companies)
- Board meeting in a Section 8 company can be conducted once every 6 months.
- Minimum quorum for a board meeting is one-fourth (instead of one-third for other companies) or two directors whichever is less.
- Resolutions under Section 179 of the Act relating to borrowing of monies, investing the funds of the company and providing loans or security or guarantee can be passed by circulation.
- A Director of a Section 8 company, if interested in a transaction placed before the board for discussion and approval, is required to disclose his interest in a transaction, arrangement or contract and abstain from participating in the meeting only if the value of such transaction exceeds Rs.1 Lakh.

A Section 8 company can avail the above privileges only if no default is committed in filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar of Companies.

Section 8 company and Corporate Social Responsibility (CSR)

A Section 8 company can be a preferred vehicle for achieving CSR objectives. The Companies (Corporate Social Responsibility Policy) Rules, 2014 (the Rules) provide that inter alia Section 8 companies with an established track record of three years of handling CSR projects are recognised as eligible implementing agencies through which CSR applicable companies can achieve their CSR spend objectives. However, if a Section 8 company were to be incorporated by a company to which CSR provisions are applicable, and if such Section 8 company were to be used as implementing agency, then no such track record is required. Further, a Section 8 company is required to have registration under Section 12A and Section 80G of the Income Tax Act to be eligible for CSR implementation agency. Further such Section 8 company is required to file Form CSR-1 with MCA and obtain CSR Registration Number before it handles CSR projects on or after 01st April, 2021. The Rules also enable Section 8 company to hold assets created out of CSR contributions provided by companies for use to further CSR objects.

In the absence of any specific exemption, a Section 8 company which attract the conditions under Section 135 of the Act namely,

(i) Net worth of rupees five hundred crore or more, or (ii) Turnover of rupees one thousand crore or more, or (iii) Net profit of rupees five crore or more is required to spend 2% of its average net profits of preceding three financial years. While the main objects of a Section 8 company can include social welfare, it should be understood that such companies need not carry on all or any of the CSR activities specified under Schedule VII to the Act as their main objects. Further, it should also be understood that the activities conducted by Section 8 companies need not necessarily fall under the ambit of CSR objectives under Schedule VII to the Act.

Hence the Act has rightly made the provisions of Section 135 applicable even to Section 8 companies which meet the aforesaid conditions. However, it is advisable to such of those Section 8 companies which act as implementing agencies for CSR to amend their main objects to reflect the CSR objectives as per Schedule VII, so that the activities they carry on as implementing agencies do not fall outside their main objects.

Who can authenticate Documents/Documents/ Contracts/ Regulatory filings on behalf of a Company?

As per Section 21 of Companies Act, 2013 [CA,2013]:

- a. a document or proceeding requiring authentication by a company; or
- b. contracts made by or on behalf of a company, may be signed by any Key Managerial Personnel [“KMP”] or an Officer or Employee of the company duly authorised by the Board in this behalf.

As per Section 2(59) of CA,2013 "officer" includes any director, manager or KMP or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.

As per Section 2(51) of CA, 2013 "KMP", in relation to a company, means:

- a. the Chief Executive Officer or the managing director or the manager;
- b. the Company Secretary;
- c. the Whole-time director;
- d. the Chief Financial Officer
- e. such other officer, not more than one level below the directors who is in whole-time employment, designated as KMP by the Board

From the abovementioned definitions, prima facie we come to a conclusion that the following persons can authenticate documents, contracts and proceedings on behalf of the Company:

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| a. Directors | e. Company Secretary |
| b. Manager | f. Any officer reporting to a whole-time director being designated as KMP |
| c. Chief Executive Officer | g. Any employee duly authorized by the Board. |
| d. Chief Financial Officer | |

Hence, it can be said that Directors and KMPs are deemed signatories for signing or executing documents and contracts in the name of a company without any further authorization by the Board. Whereas if an “officer” other than a Director or KMP were to sign or execute a document or a contract, then express authorization to that effect is required by the Board to enable that “officer” to be an “Authorized Signatory”.

The question is whether all or any of the abovementioned persons can then also authenticated all regulatory filings?

As per fifth proviso to Rule 7 of The Companies (Registration Offices and Fees) Rules, 2014 – any correspondences (physically or electronically) and documents to be filed through the portal of the Registrar/Central Government by any person shall contain name, designation, address, Membership number or Director Identification Number, as the case may be, of the person signing such document and make sure correctness thereof and in no case, correspondence, merely with signature and writing authorised signatory shall be acceptable.

Further Rule 8 of the aforesaid rules, about Authentication of documents clarifies that “the electronic forms required to be filed under the Act or the rules thereunder shall be authenticated on behalf of the company by the Managing Director or Director or Secretary of the Company or other KMP.”

It is therefore made very clear that not any “Authorised Signatory” nor “any Employee” despite having Board authorisation; can authenticate regulatory filings. As per the present dispensation in authenticating e-forms, the process enables only “deemed signatories” to sign and file. There is no enablement for an “Authorised Signatory” to sign and file despite express Board authorisation, in spite of provision having been made in the e-forms for mentioning the Board resolution date.

Please fill out the following form. You can save data typed into this form. Highlight Existing Fields

Declaration

I am authorized by the Board of Directors of the Company vide resolution no. [] Dated [] (DD/MM/YYYY) to sign this form and declare that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I further declare that:

1. Whatever is stated in this form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this form has been suppressed or concealed and is as per the original records maintained by the company.
2. All the required attachments have been completely and legibly attached to this form. It is also certified that copy of the resolution(s) or agreement(s) filed herewith is or are a true copy(ies) of the original.
3. Any application, writ petition or suit had not been filed regarding the matter in respect of which this petition/application has been made, before any court of law or any other authority or any other Bench or the Board and not any such application, writ petition or suit is pending before any of them.

- To be digitally signed by []

* Designation []

Name of liquidator []

Director Identification no. []

PAN of the liquidator, Director or Liquidator []

CEO or CFO or membership number of Company secretary []

Certificate by practicing professional

I declare that I have been duly engaged for the purpose of certification of this form, it is here by certified that I have gone through the provisions of the Companies Act, 2013 and rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the Company/ applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this

Further it is noted that despite the provisions for enablement of persons other than Managing Director or Whole Time Director or Manager or Chief Financial Officer or Company Secretary, to be designated as KMP, there is no provision to file Form DIR 12 for such persons. Neither there is an e-form prescribed to notify the MCA as to the authority provided to an “officer” to sign and execute documents and contracts. Due to this inability, such an “officer” is not recognised on MCA portal as a Signatory. Form MGT 14 can however be filed for applicable companies. This however doesn’t identify them as KMP on MCA portal.

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In case of a Chief Executive Officer or Chief Finance Officer [not being a member of ICAI or ICSI or ICAI (Cost Accountants)], being non-director but being an Authorised Signatory, PAN can be mentioned instead of membership number and signature can be affixed for filing forms.

Therefore a person being a Director or KMP executing a document or contract or filing a form should mention their actual designation and if the executant is an authorized officer of the Board, in addition to mentioning their designation, should also provide reference to the Board resolution vesting authority and shall attach a certified copy of such resolution to the document or contract executed. Merely mentioning “Authorized Signatory” without the above should be desisted.
