

Conversion of an existing company into Section 8 Company

Whether conversion of an existing Company into Section 8 Company is allowed??

- Yes, only a Limited Company, subject to some conditions, is allowed to convert itself into Section 8 Company in terms of the provisions contained under Section 8 (5) of the Companies Act, 2013.
- Powers in this regard are delegated to Registrar of Companies (ROC).
- Please note that Section 8(1) allows person or association of persons to be registered as a Section 8 Company on fulfilment of certain conditions and procedure as prescribed therein. The term “person” has not been defined in the Companies Act, 2013. Section 2(41) of the General Clauses Act, 1897 provides that “person” shall include any Company, or association or body of individuals, whether incorporated or not.
- Accordingly, Partnership Firms/LLPs/Society, Trusts are allowed to convert themselves into Section 8 Company.
- However, an OPC cannot be converted into Section 8 as Company Rule 3(5) of the Companies (Incorporation) Rules, 2014 prohibits conversion of an OPC into Section 8 Company.

What Section 8 (5) says??

Section 8 (5) of the Companies Act, 2013 states that where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word “Limited”, or as the case may be, the words “Private Limited” from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

Documents required for conversion of an existing Company into Section 8 Company

As per the provisions contained under Rule 20 (1) of the Companies (Incorporation) Rules, 2014, An application in **Form INC-12 along with the following documents and the fee to be filed with ROC:**

- (a) the e-Memorandum of Association and e-Articles of Association of the company;
- (b) the declaration by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 of the Act and rules made thereunder and that all the requirements of the Act and the rules made thereunder or supplemental thereto have been complied with;
- (c) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;
- (d) the certified copy of the resolution passed in general or board meetings approving registration of the company under section 8 of the Act; and
- (e) a declaration by each of the persons making the application

Further, as per the form INC-12, the following would also be required:

- Estimation of future income and expenditure for the next three years
- Entrenched Article, if any

Procedure for conversion of existing Company into Section 8 Company

- Necessary alterations of MOA (as per INC-13) /AOA
- Holding of Board Meeting or General Meeting approving registration of company into section 8 company is required. (form MGT-14 of SR be filed with ROC within 30 days of passing of resolution).
- Application in form INC-12
- Within a week from the date of making the application to the Registrar, publish a notice in form INC-26, at least once in English language in English newspaper circulation in that district and one in principal vernacular language of the district where registered office is situated, in vernacular newspaper and on the websites as notified by the CG.
- Such notice shall be sent to ROC.
- The license for Section 8 Company shall be issued by ROC in INC-16 or INC-17, as the case may be.

- The Registrar may direct the company to insert in its MOA/AOA, such conditions of the license, as may be specified in this behalf.

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