

Frequently Asked Questions
on
Section 8 Companies under the
Companies Act, 2013



Corporate Laws & Corporate Governance Committee
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Board : Corporate Laws & Corporate Governance Committee
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Foreword

The framework of Section 8 Companies under the Companies Act, 2013 represents a significant legislative intent to promote charitable and not-for-profit activities through a structured corporate form. Section 8 provides a legally robust mechanism for entities engaged in areas such as education, healthcare, social welfare, research, environmental protection, and other objects of general public utility, while also ensuring transparency, accountability, and regulatory oversight.

With the enforcement of the Companies Act, 2013, Section 8 replaced the earlier Section 25 of the Companies Act, 1956, thereby strengthening governance norms and compliance requirements for not-for-profit corporate entities. The intent of the legislature has been to balance operational flexibility with strict restrictions on profit distribution, ensuring that all the income and surplus are applied solely towards charitable objects.

As per data published by the Ministry of Corporate Affairs (MCA), Government of India, registrations of Section 8 companies under the Companies Act, 2013 is increasing year by year, reflecting the growing adoption of the Section 8 corporate structure for not-for-profit activities in India. These entities play a vital role in implementing social initiatives, supporting public welfare programmes, and acting as key partners in the execution of Corporate Social Responsibility (CSR) projects. Following the strengthening of CSR regime, Section 8 Companies have emerged as one of the most significant implementing agencies for CSR activities across sectors.

The regulatory environment governing Section 8 Companies has evolved considerably through statutory amendments, delegated legislation, exemption notifications, and policy reforms. This evolving landscape necessitates continuous awareness and clarity on legal and compliance requirements among stakeholders.

I am pleased to note that Corporate Laws & Corporate Governance Committee of ICAI is bringing out this publication titled “**Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013**”, which I am confident will prove to be of immense value to the members and other stakeholders.

I extend my appreciation to CA. Babu Abraham Kallivayalil, Chairman, CA. Priti Savla, Vice-Chairperson, and all the members of the Committee for their commendable efforts in bringing out this important publication at this opportune time.

I am sure that the members of the profession and other interested readers will find this publication highly useful and relevant in their professional endeavours.

CA. Charanjot Singh Nanda
President, ICAI

Date : February 05, 2026

Preface

Section 8 companies in India, governed by the Companies Act, 2013, are not-for-profit entities established to promote charitable and socially beneficial objectives such as commerce, art, science, education, research, sports, social welfare, religion, charity, protection of environment, or similar causes. They are structured corporate bodies that combine public welfare objectives with defined governance standards and regulatory oversight, thereby offering credibility, transparency, and limited liability to their members.

Section 8 expressly restricts the application of profits or other income solely to the promotion of the objects for which the company is incorporated. It prohibits the declaration or payment of any dividend to members and continues to permit partnership firms to be admitted as members. The 2013 Act elaborates the permissible objects and provides a clearer statutory framework compared to earlier legislation.

Although certain exemptions and procedural relaxations are available to facilitate their functioning, Section 8 companies remain subject to specific statutory conditions, approvals, and compliance requirements. In practice, the regulatory framework involves multiple layers of substantive provisions, rules, notifications, and exemption circulars. Professionals and stakeholders often encounter interpretational and procedural challenges, particularly in areas involving approvals, governance relaxations, and regulatory scrutiny.

Accordingly, there is a clear need for structured, practice-oriented guidance that not only explains the legal framework but also assists in its effective procedural implementation. This publication has been developed with that objective. It seeks to provide practical and structured guidance that bridges statutory provisions with their procedural application. The endeavour is to present the legal framework governing Section 8 Companies in a clear, coherent, and accessible manner. By addressing both substantive compliance requirements and their practical implementation aspects, the publication aims to promote informed interpretation, reduce procedural ambiguity, and facilitate effective and timely adherence to applicable regulatory obligations.

In this connection, we take this opportunity to thank **CA.Charanjot Singh Nanda, President, ICAI** and **CA.Prasanna Kumar D., Vice President, ICAI**, for their guidance and support in bringing out this publication.

We would also like to acknowledge the insightful contributions of **CA. (Dr.) M. Kandasami, CA.Arjun K. R.** and **CA.Rajib Chatterjee** for their valuable contributions during the finalisation of this publication.

We place on record our appreciation to all the Committee members for their help and guidance in framing and bringing out this publication. We also appreciate the efforts **Ms. Seema Jangid, Secretary to the Committee** and the team for facilitating this publication.

The Corporate Laws and Corporate Governance Committee believes that this publication will serve as a valuable reference for members of the profession, industry participants, and other stakeholders. By presenting regulatory and procedural aspects in a clear and systematic manner, it is intended to strengthen understanding, promote sound compliance practices, and contribute to effective governance in the functioning of Section 8 Companies.

CA. Babu Abraham Kallivayalil
Chairman
Corporate Laws & Corporate
Governance Committee, ICAI

CA. Priti Savla
Vice-Chairperson
Corporate Laws & Corporate
Governance Committee, ICAI

February 06, 2026

Index

Chapter 1. Understanding Section 8 Companies: Legal Framework, Eligibility and Licensing	1
Chapter 2. Section 8 Company Limited by Guarantee vis-à-vis Section 8 Company Limited by Shares	6
Chapter 3. Formation & ROC Approval Process	11
Chapter-4. Capital Structure & Membership	14
Chapter 5. Board of Directors and their Meetings	17
Chapter 6. Meetings & Decision Making	21
Chapter 7. Financial Management & ROC Compliance	25
Chapter 8. CSR Interface with Section 8 Companies	30
Chapter 9. Conversion, Merger & Exit Routes	34
Chapter 10. Regulatory Violations & Penalties	40
Chapter-11. Miscellaneous Provisions and Emerging Regulatory Issues	45
Chapter 12. Exemptions and Relaxations	48

Understanding Section 8 Companies: Legal Framework, Eligibility and Licensing

Q1. What is meant by a “Section 8 Company” under the Companies Act, 2013?

A1. A Section 8 Company is a company incorporated under Section 8 of the Companies Act, 2013 with the primary objective of promoting charitable or not-for-profit purposes, such as commerce, art, science, education, research, social welfare, religion, charity, environmental protection or any other object of general public utility. Such a company applies its profits or income solely towards the promotion of its objects and prohibits payment of any dividend to its members.

Q2. What is the legislative intent behind formation of Section 8 of the Companies Act 2013

A2. The legislative intent behind formation of section 8 company is to provide a corporate structure with enhanced credibility, transparency and accountability for entities carrying on charitable or non-profit activities, while ensuring strict regulatory oversight to prevent misuse of funds and profit distribution.

Q3. Which provisions govern the incorporation and regulation of Section 8 Companies?

A3. Section 8 Companies are governed by:

- Section 8 of the Companies Act, 2013
- Companies (Incorporation) Rules, 2014
- Other applicable sections of the Companies Act, 2013 read with rules thereunder.
- Relevant MCA notifications, circulars, exemptions

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

- Other applicable laws such as the Income-tax Act, 1961 and FCRA, 2010 (where applicable).

Q4. Who is eligible to incorporate a Section 8 Company?

A4. As per Section 8(1) of the Companies Act, 2013, a Section 8 Company may be incorporated by any person or association of persons proposing to be registered for promoting the objects specified under the said section.

Q5. What are the permissible objects of a Section 8 Company?

A5. As per Section 8(1)(a) of the Companies Act, 2013, a Section 8 Company may be formed for promoting:

- Commerce, art, science, sports, education or research
- Social welfare
- Religion or charity
- Protection of environment
- Any other object of general public utility.

The objects must be clearly stated in the Memorandum of Association, and the company must apply its income solely towards promotion of such objects.

Q6. Whether a Section 8 Company pursue multiple charitable objects?

A6. Yes. A Section 8 Company may pursue multiple charitable objects, provided:

- All such objects are covered under Section 8 of Companies Act, 2013
- The objects are clearly stated in the Memorandum of Association and are not contradictory
- The company applies its income and profits, if any, solely towards promotion of its stated objects

Q7. What conditions are examined before grant of Section 8 licence?

Understanding Section 8 Companies: Legal Framework, Eligibility and Licensing

A7. The authority ensures that objects are charitable, income is applied solely towards such objects, no dividend is distributed, MOA/AOA contain restrictive clauses, and promoters are fit and proper persons.

Q8. Whether carrying on commercial or business activity permitted for a Section 8 Company?

A8. A Section 8 Company may carry on business or commercial activities, only if:

- Activities are incidental or ancillary to the attainment of its charitable objects (not independent profit-making ventures).
- MOA expressly authorises such incidental commercial activities.
- Entire surplus is reapplied towards its charitable purposes as mandated under Section 8(1)(b).
- No dividend or profit is distributed to members, in compliance with Section 8(1)(c).
- Activities must not violate the licence conditions imposed by the Central Government.

Q9. Whether a licence is mandatory for incorporation of a Section 8 Company?

A9. Yes. Grant of a licence by the Central Government is mandatory for incorporation of a company under Section 8 of the Companies Act, 2013. In accordance with Section 8(1) of the Act read with Rule 19 of the Companies (Incorporation) Rules, 2014, an application for grant of licence is required to be made in the prescribed manner by an existing company willing to be formed as a Section 8 Company. The powers of the Central Government¹ for grant of such licence have been delegated to the Central Registration Centre (CRC), Manesar in accordance with the provisions of the Act and the rules made thereunder.

¹ In exercise of the powers conferred under Section 458 of the Companies Act, 2013, the Central Government has delegated its powers under Section 8(1) to the Registrar of Companies vide Notification S.O. 1353(E) dated 21st May, 2014.

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

Q10. Whether a Section 8 Company can be incorporated with or without share capital?

A10. Yes. A Section 8 Company may be incorporated with share capital or without share capital, depending upon its structure and funding model. Such a company can be limited by guarantee or limited by shares.

Q11. Whether the use of words “Limited” or “Private Limited” is mandatory in the name?

A11. No. Pursuant to the licence granted under Section 8 of the Companies Act, 2013, a Section 8 Company is exempted from using the words “Limited” or “Private Limited” in its name.

Q12. Can an Unlimited Company form a Section 8 Company?

A12. No, an Unlimited Company cannot form a Section 8 Company.

Q13. What are the key conditions attached to a Section 8 licence?

A13. The principal conditions attached to a Section 8 licence are as follows:

- Application of profits or income solely towards charitable objects
- Prohibition on payment of dividend to members
- Compliance with the Memorandum and Articles of Association
- Compliance with all applicable laws and regulatory requirements
- Any addition or alteration of the objects requires prior approval of the Central Government under Section 8(4) read with Sections 13 and 14 of the Companies Act, 2013.

Q14. Whether a Section 8 Company can distribute profits in any form to its members?

A14. No. A company registered under this section shall prohibit the payment of any dividend or profits in any form to its members. The prohibition covers all forms of dividend, including interim, final, or deemed dividend.

Q15. Whether payment of remuneration to directors is permitted?

Understanding Section 8 Companies: Legal Framework, Eligibility and Licensing

- A15. Yes. Reasonable remuneration may be paid to directors or employees for services rendered, provided:
- It is authorised by the Articles of Association
 - The remuneration is reasonable and justified for the work performed
 - The payment is properly documented and approved by the Board of Directors through a resolution
 - It is not in the nature of profit distribution
 - Such remuneration complies with related party transaction rules under Section 188 of the Companies Act
 - Payments must be made at arm's length and disclosed in financial statements.

Q16. Whether profits earned incidentally by a Section 8 company violate Section 8 conditions?

- A16. No. Earning profits per se does not violate Section 8, provided:
- Profits are incidental to the attainment of charitable objects
 - Entire surplus is reinvested in furtherance of objects
 - No portion is distributed to members, directors, or promoters

Judicial view supports that profit motive is prohibited, not profit generation.

Section 8 Company Limited by Guarantee vis-à-vis Section 8 Company Limited by Shares

Q17. What is the difference between a Section 8 Company Limited by Guarantee and Section 8 Company limited by shares?

A17. Section 8 Company Limited by Guarantee is a not-for-profit company incorporated under Section 8 of the Companies Act, 2013, without share capital, where the liability of members is limited to a fixed guarantee amount undertaken in the Memorandum of Association, only in the event of winding up.

As per Section 2(21), a “company limited by guarantee” means a company where the liability of members is limited to the amount they undertake to contribute to the assets of the company in the event of its winding up.

Although Section 8 permits incorporation with or without share capital, a company registered as limited by guarantee is generally formed without share capital. In such cases, members act as guarantors and not as shareholders.

Whereas, Section 8 Company Limited by shares is a not-for-profit company incorporated under Section 8 of the Companies Act, 2013, with share capital, where the liability of members is limited to the unpaid amount on shares held [Section 2(22)], subject to application of profits solely for charitable objects and strict prohibition on distribution of profits or dividends under section 8(1)(b) and (c).

Q18. Who are the members in Section 8 Company limited by guarantee and Section 8 company limited by shares?

A18. In a Section 8 company limited by guarantee, the members are the subscribers to the Memorandum and all persons who agree in writing to become members and whose names are entered in the Register of Members. Since the company does not have share capital, the members act as guarantors, and each guarantor

Section 8 Company Limited by Guarantee vis-à-vis Section 8 Company Limited by Shares

becomes a member once their name is entered in the Register of Members, as provided under Section 2(55) of the Companies Act, 2013.

Whereas, in a Section 8 company limited by shares, the members are:

- the subscribers to the Memorandum
- persons who agree in writing to become members and whose names are entered in the Register of Members, and
- persons holding shares whose names are entered as beneficial owners in the depository system,
- as defined under Section 2(55) of the Companies Act, 2013.

Q19. Is the guarantee amount required to be paid every year? Similarly, is the unpaid share capital payable annually?

A19. No, the guarantee amount is not payable annually. It becomes payable only in the event of winding up of the company and only to the extent required to meet its outstanding liabilities, as specified in the Memorandum of Association.

Similarly, the Unpaid share capital is not a recurring payment. It becomes payable only:

- When calls are validly made by the company in accordance with its Articles of Association; or
- On winding up, to the extent required

Q20. Can a Section 8 company limited by guarantee be converted into another type of company, and can a share-capital based Section 8 company be converted into a guarantee-based Section 8 company?

A20. Yes. As per Section 8(4)(ii) of the Companies Act, 2013, read with Rule 21 of the Companies (Incorporation) Rules, 2014, a Section 8 company limited by guarantee may convert into another form of company, subject to the prescribed procedures and statutory approvals. It may:

- Convert into a Section 8 company limited by shares; or

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

- Convert into a normal company, subject to the approval of the Central Government/Regional Director and compliance with the conditions prescribed under the law.

Further, a Section 8 company having share capital may also be converted into a company limited by guarantee, by following the conversion mechanism provided under Section 18 of the Companies Act, 2013, along with the procedures prescribed in the Companies (Incorporation) Rules, 2014.

Q21. Can the guarantee amount be changed?

A21. Yes, but only by:

- Alteration of the Memorandum of Association
- Passing a special resolution
- Approval of the RoC

Q22. Why would a Section 8 company choose a share-based structure?

A22. To enable:

- Defined promoter or institutional control
- Structured governance
- Long-term stewardship (not investment)

Q23. Can shares be transferred?

A23. Yes, but typically:

- Subject to restrictions in the Articles
- Requiring Board or member approval
- Designed to prevent commercialisation of control

However, for Section 8 companies with share capital, any transfer of shares must be in demat form by June 30, 2025, as mandated by MCA (Rule 9B).

Q24. What happens to share capital on winding up?

Section 8 Company Limited by Guarantee vis-à-vis Section 8 Company Limited by Shares

- A24. On winding up of a share-based Section 8 company:
- Shareholders do not receive surplus
 - After satisfaction of debts and liabilities, the remaining assets must be transferred to another Section 8 company or to an entity with similar charitable objects, as determined in accordance with Section 8 of the Companies Act, 2013.
 - The capital of the company cannot be distributed as profit, dividend, or economic gain to members.
- Q25. Can a share-based Section 8 company convert into a guarantee-based Section 8 company, and what procedures under Section 18 of the Companies Act, 2013 and the Companies (Incorporation) Rules, 2014 must be followed for such conversion?**
- A25. Yes, only by following the conversion mechanism under Section 18 of the Companies Act, 2013, along with the procedures prescribed in the Companies (Incorporation) Rules, 2014.
- Q26. Whether share-based Section 8 companies are preferred for CSR?**
- A26. They are commonly used as:
- CSR implementation arms
 - Corporate foundations
- provided governance and utilisation norms are strictly followed.
- A Section 8 company can be preferred for CSR purposes only if it has obtained mandatory CSR-1 registration, maintains strict governance and fund-utilisation compliance including proper reporting and separate books of account, and possesses the required three-year track record unless it is set up directly by the funding company.
- Q27. Can the share capital of a Section 8 company be changed?**
- A27. Yes, subject to:
- Alteration of MOA/AOA

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

- Passing requisite resolutions which includes passing of Board Resolution, Special Resolution for alteration of MOA and AOA and Filing of MGT-14
- Compliance with Section 8 licence conditions
- Approval of the RoC and other authorities, where required

Capital restructuring attracts heightened scrutiny.

Q28. Can a Section 8 company limited by shares/guarantee be insolvent?

A28. Yes. A Section 8 company, whether limited by shares or limited by guarantee, can become insolvent. Although such companies operate on a not-for-profit basis, they may still incur debts and face financial distress.

Section 8 companies fall within the definition of a “corporate person” under Section 3(7) of the Insolvency and Bankruptcy Code, 2016 (IBC). Accordingly, if they default on their financial or operational debts, insolvency proceedings may be initiated against them under the IBC, including the Corporate Insolvency Resolution Process (CIRP). Judicial authorities, including the NCLAT, have also recognized that Section 8 companies can be subjected to CIRP and, where applicable, liquidation.

Additionally, such companies may also be wound up under the Companies Act, 2013, if the circumstances so require.

Formation & ROC Approval Process

Q29. What are the statutory forms prescribed for incorporation of a Section 8 Company under the Companies Act, 2013 and applicable rules?

A29. Incorporation of a Section 8 Company is carried out through the SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus) system in accordance with Section 7 read with Section 8 of the Companies Act, 2013 and the Companies (Incorporation) Rules, 2014. The key forms involved are SPICe+ Part A (for name reservation) and SPICe+ Part B (for incorporation and licensing).

Form INC-12 i.e. application for grant of licence under Section 8 of the Companies Act, 2013 is not required to be filed for fresh incorporation of a Section 8 Company, as the licence is applied through SPICe+ only. INC-12 is only required to be filed in case of conversion of an existing company into a Section 8 company under Rule 20 of the Companies (Incorporation) Rules, 2014.

The incorporation application shall be mandatorily accompanied by e-MOA, e-AOA, AGILE-PRO-S (for GST, EPFO, ESIC, bank account, etc.), and Form INC-9 (declaration by subscribers and first directors). The Registrar of Companies, acting under delegated authority of the Central Government, examines and grants the Section 8 licence and Certificate of Incorporation.

Q30. What documents are required for grant of Section 8 licence by a proposed company willing to be registered under section 8?

A30. The key documents include:

- Memorandum of Association in Form INC-13
- Declaration by a professional (CA/CS/CMA) in practice
- Declaration by subscribers/directors

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

- Estimated income and expenditure statement for the next three years, specifying the sources of the income and the objects of the expenditure
- Articles of Associations in compliance with the provisions of the Companies Act
- Address proof of subscribers / Directors

Q31. What is the step-by-step incorporation process for a Section 8 Company under the Companies Act, 2013?

A31. The incorporation of a Section 8 Company is carried out in accordance with Sections 7 and 8 of the Companies Act, 2013 read with the Companies (Incorporation) Rules, 2014, and broadly involves the following steps:

- Obtain Digital Signature Certificates (DSC). Every proposed director and subscriber must obtain a DSC, to sign the incorporation documents electronically (SPICe+, INC-13, INC-31, INC-9, CSR-1 etc.).
- Apply for Director Identification Number (DIN) through SPICe+ (INC-32).
- Name reservation through SPICe+ Part A, ensuring compliance with Rule 8 and inclusion of words permitted for Section 8 Companies
- Preparation of charter documents, including MOA in Form INC-13 reflecting charitable objects and AOA as per applicable schedules
- Filing of incorporation application in SPICe+ Part B, which includes the embedded Section 8 licence application in Form INC-12
- Attachment of mandatory declarations and documents, including Form INC-9, promoters' declarations, estimated income and expenditure, and supporting proofs
- Submission of linked forms such as AGILE-PRO-S for statutory registrations

Formation & ROC Approval Process

- Scrutiny by the Registrar of Companies, acting under delegated authority of the Central Government, and grant of Section 8 licence
- Issue of Certificate of Incorporation, after which the company comes into legal existence as a Section 8 Company.

Q32. Who processes and grants the Section 8 licence?

A32. The Central Registration Centre (CRC), Manesar, acting under delegated authority of the Central Government, examines the SPICe+ application and grants the Section 8 licence along with the Certificate of Incorporation.

Q33. What happens if the SPICe+ application is marked for resubmission?

A33. In case of resubmission, the applicant must rectify defects and resubmit the application within the prescribed timeline on the MCA portal, failing which the application may lapse.

Q34. Whether a Section 8 Company is permitted to change its registered office from one State to another?

A34. Yes. Such change requires Central Government approval under Section 13(4) of the Companies Act, 2013 in addition to compliance with Section 8 license conditions.

Capital Structure & Membership

- Q35. Whether a Section 8 company can have both individual and body corporate members simultaneously?**
- A35. Yes, Section 8(1) of Companies Act 2013, allows a person or an association of persons to form a company for charitable or other specified purposes. Further, Section 8(3) of Companies Act 2013, allows a firm to be a member of the company registered under this section.
- Q36. Whether it is mandatory for a Section 8 company to have members even if it is promoted by donors only?**
- A36. Yes. Every company must have members in accordance with Section 3 read with Section 8 of the Companies Act, 2013. Donors or beneficiaries do not automatically become members unless formally admitted and recorded in the Register of Members maintained under Section 88 of the Companies Act, 2013 in accordance with the Articles of the said company.
- Q37. Whether beneficiaries of a Section 8 company can also be its members?**
- A37. Yes. The Companies Act, 2013 does not prohibit beneficiaries from becoming members, provided membership is permitted by the Articles of Association under Section 5 of the Companies Act, 2013 and does not violate Section 8(1)(c) of the Companies Act, 2013 relating to prohibition on profit distribution.
- Q38. Whether Section 8 company can restrict membership to a specific class (e.g., professionals, institutions)?**
- A38. Yes. Eligibility criteria for membership may be prescribed in the Articles of Association in terms of Section 5 of the Companies Act, 2013, provided such restrictions are consistent with the charitable objects and does not override the provision of the Act.
- Q39. Whether voting rights of members are mandatory in a Section 8 company?**

Capital Structure & Membership

- A39. Yes. Members of Section 8 company must have voting rights; however, the Articles may prescribe differential voting rights, weighted voting, or class-based voting under Sections 5, 14 and 43 of the Companies Act 2013 and Rule 4 of the Companies (Share Capital and Debentures) Rules, 2014, provided it does not defeat the charitable character or result in control for private benefit.
- Q40. Can a Section 8 Company be incorporated with share capital, and what special restrictions apply regarding dividends?**
- A40. Yes. A Section 8 company may be incorporated either with or without share capital [Section 8(1)]. However, if incorporated with share capital, dividend distribution is absolutely prohibited.
- Q41. If a Section 8 company has share capital, whether it can issue equity shares at premium?**
- A41. Yes. Issue of shares at premium is permitted. However, the securities premium account must be utilised strictly as per Section 52 of the Companies Act, 2013 and not in a manner that results in indirect distribution of profits.
- Q42. Whether preference shares can be issued by a Section 8 company?**
- A42. No, A Section 8 Company cannot practically issue preference shares. Preference shares involve: Preferential dividend rights, and Preferential capital repayment on winding up.
- Q43. Whether minimum paid-up share capital is required for Section 8 companies?**
- A43. No minimum capital requirement exists post-Companies (Amendment) Act, 2015. Capital structure should be commensurate with operational needs and regulatory perception.
- Q44. Whether a Section 8 company buy back its shares?**
- A44. No. A Section 8 Company cannot undertake buy-back of shares under Section 68 of the Companies Act, 2013. A buy-back involves the company paying consideration to members, which is in direct violation of the non-distribution condition under Section 8(1)(c).

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

Q45. Whether dematerialization rules are applicable on a Section 8 company post-2025?

A45. Dematerialization requirements under Rule 9B of the Companies (Prospectus and Allotment of Securities) Rules, 2014 are not applicable to guarantee companies since they do not have share capital. However, Section 8 Companies having share capital are required to comply with dematerialization of securities in accordance with MCA Notification² introducing Rule 9B.

Q46. Whether shareholding pattern can be altered post-incorporation?

A46. Yes, through transfer or fresh issue, but any alteration must not compromise charitable intent or vest control for private benefit. Significant changes may attract scrutiny during annual filings or inspections.

Q47. Whether a Section 8 company can create reserves and surplus?

A47. Yes. Accumulation of surplus is permitted, provided it is ploughed back into the objects of the company and not distributed as required under Section 8(1)(b).

Q48. Whether a Section 8 company can be incorporated as a One Person Company (OPC)?

A48. No. A Section 8 company cannot be incorporated as an OPC since Section 8 requires more than one member. Further, Rule 3(5) of the Companies (Incorporation) Rules, 2014 prohibits conversion of OPC into Section 8 company.

² Rule 9B was inserted vide MCA Notification No. G.S.R. 802(E) dated 27 October 2023, effective from 30 September 2024, mandating dematerialization of securities by certain companies, including Section 8 Companies having share capital.

Board of Directors and their Meetings

Q49. Whether a Section 8 company is required to have a minimum number of directors, and does it differ from other companies?

A49. Section 8 companies are exempted from the applicability of Section 149(1) and its first proviso (which prescribes minimum directors). This exemption is part of the MCA Notification dated 5 June 2015, issued under Section 462, granting substantial relaxations to Section 8 companies.

Q50. Whether a Section 8 company can appoint nominee directors or institutional representatives on its Board?

A50. Yes. There is no restriction under the Act on appointment of nominee or institutional directors in a Section 8 company, provided such appointment is authorized by the Articles of Association and complies with Section 152 or Section 161(3) of the Companies Act, 2013, as applicable.

Q51. Whether a body corporate can be appointed as a director in a Section 8 company?

A51. No, as per Section 149(1) of the Companies Act, 2013, only individuals can be appointed as directors. This restriction equally applies to Section 8 companies.

Q52. Can the Board of a Section 8 company delegate its powers to committees or officers?

A52. Yes. Under Section 179(3) of the Companies Act, 2013, the Board may delegate certain powers to committees or officers by passing a Board resolution, except powers which are specifically required to be exercised by the Board itself.

Q53. Whether holding of Board Meetings is mandatory for Section 8 companies?

A53. Yes. Section 173 of the Companies Act, 2013 applies to Section 8 companies. However, as per MCA Notification No. G.S.R. 466(E) dated 5 June 2015 (issued under the Companies Act, 2013, as

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

amended)), Section 8 companies are required to hold at least one Board Meeting in every six calendar months.

Q54. Whether Board meetings of a Section 8 company can be held through video conferencing?

A54. Yes. Section 173(2) of the Companies Act, 2013 read with Companies (Meetings of Board and its Powers) Rules, 2014 permits participation through video conferencing or other audio-visual means.

Q55. Whether constitution of Audit Committee is mandatory for a Section 8 company?

A55. Section 177 of the Companies Act, 2013 applies only to listed companies and prescribed classes of public companies. Section 8 companies are exempt unless they independently meet such criteria.

However, as per MCA Notification No. G.S.R. 466(E) dated 05.06.2015 issued under Section 462 of the Companies Act, 2013, in sub-section (2) of Section 177, the words “with independent directors forming a majority” shall be omitted in case of a Section 8 company. Accordingly, if a Section 8 company is otherwise required to constitute an Audit Committee, it need not have majority of Independent Directors on such committee.

Q56. Whether Nomination and Remuneration Committee is required to be formed in a Section 8 company?

A56. Nomination and Remuneration Committee is mandatory only for listed public companies and public companies meeting thresholds prescribed under Section 178 of the Companies Act, 2013 read with Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014.

However, as per MCA Notification No. G.S.R. 466(E) dated 05.06.2015 issued under Section 462 of the Companies Act, 2013, Section 178 shall not apply to a Section 8 company. Accordingly, a Section 8 company is not required to constitute a Nomination and Remuneration Committee.

Board of Directors and their Meetings

Q57. Whether formation of Stakeholder Relationship Committee is applicable to Section 8 companies?

A57. No, as per MCA Notification No. G.S.R. 466(E) dated 05.06.2015 issued under Section 462 of the Companies Act, 2013, Section 178 shall not apply to a Section 8 company.

Therefore, a section 8 company is not required to constitute Stakeholder Relationship Committee.

Q58. Whether a director of a Section 8 company can hold directorships in other companies?

A58. Yes. Section 165(1) of Companies Act, 2013 does not apply to Section 8 company. Accordingly, directorship in a Section 8 company is not considered while counting maximum number of directorships.

Q59. Does the Board of a Section 8 company require prior approval of Central Government for major decisions?

A59. While routine decisions do not require approval, certain actions such as alteration of objects, conversion into another form, or amalgamation involving non-Section 8 entities require prior approval of the Central Government.

Q60. Whether the restriction on loans to directors under Section 185 applies to Section 8 Companies?

A60. Yes. No general exemption has been provided to Section 8 Companies from Section 185. Hence, loans, guarantees or securities to directors or related entities must strictly comply with Section 185.

Q61. Is appointment of Key Managerial Personnel mandatory?

A61. Generally, appointment of KMP is not mandatory, unless thresholds prescribed under Section 203 are met.

Q62. What statutory registers must be maintained?

A62. Key registers include:

- Register of members
- Register of directors and KMP
- Register of contracts and arrangements (Section 189)

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

- Register of loans, guarantees, and investments (if applicable)
- Register of Shares and Transfer (if applicable)

Q63. Whether related party transactions are permitted?

A63. Yes, but they must:

- Be in furtherance of the company's objects
- Be disclosed to the Board
- Comply with Section 188 (as applicable)
- Not result in private benefit to members or directors

Q64. Are directors personally liable for non-compliance?

A64. Yes. Directors and KMPs may be treated as officers in default and can be personally liable for:

- Non-filing of returns
- Misuse of funds
- Breach of licence conditions
- False statements or suppression of material facts

Meetings & Decision Making

Q65. Are the provisions relating to General Meetings under Chapter VII of the Companies Act, 2013 applicable to Section 8 Companies?

A65. Section 8 Companies are generally governed by Chapter VII (Sections 96 to 122) of the Companies Act, 2013. However, specific exemptions and modifications have been granted to Section 8 Companies vide Notification No. G.S.R. 466(E) dated 5 June 2015, as amended from time to time. Accordingly, while the framework of General Meetings applies, certain procedural requirements stand relaxed.

Q66. Is it mandatory for a Section 8 Company to hold an Annual General Meeting (AGM)?

A66. Yes. As per Section 96 of the Companies Act, 2013, every Section 8 Company (other than OPC) is required to hold an AGM.

The first AGM must be held within 9 months from the end of the first financial year and in any other case, within six months from the date of closing of the financial year.

Q67. Where can the Annual General Meeting (AGM) of a Section 8 company be held?

A67. Under Section 96(2) of the Companies Act, 2013, an AGM is generally required to be held either at the registered office of the company or at some other place within the city, town, or village where the registered office is situated.

However, the proviso to Section 96(2) provides that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:

Further, In terms of Section 96(2) of the Companies Act, 2013 read with MCA Notification No. G.S.R. 466(E) dated 05.06.2015 issued under Section 462 of the Act, an additional proviso has been

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

inserted in sub-section (2) of Section 96 in respect of Section 8 companies, whereby the time, date and place of each Annual General Meeting may be decided beforehand by the Board of Directors having regard to the directions, if any, given by the company in general meeting.

Q68. Whether a Section 8 Company is mandatorily required to hold an Extraordinary General Meeting (EGM), and what is the notice requirement for such EGM?

A68. No. A Section 8 Company is not mandatorily required to hold an Extraordinary General Meeting. An EGM is convened only when required under Section 100 of the Companies Act, 2013, either by the Board or upon a valid member requisition. The MCA exemption (Notification G.S.R. 466(E), dated 5 June 2015) only reduces the **notice period to 14 days**, but does not make EGMs compulsory.

Q69. What is the minimum notice period required for holding an Annual General Meeting (AGM) of a Section 8 company?

A69. The minimum notice period required for holding an Annual General Meeting (AGM) of a Section 8 company is fourteen clear days.

Under Section 101(1) of the Companies Act, 2013, a general meeting of a company is ordinarily required to be called by giving not less than twenty-one clear days' notice. However, pursuant to MCA Notification No. G.S.R. 466(E) dated 05 June 2015, issued under Section 462 of the Companies Act, 2013, this requirement has been relaxed for Section 8 companies.

Accordingly, in the case of a Section 8 company, the notice period of twenty-one days is substituted with fourteen clear days, and therefore an AGM may be convened by giving at least fourteen clear days' notice.

Q70. Can a Section 8 Company voluntarily provide e-voting facility?

A70. Yes. A Section 8 Company may voluntarily provide e-voting, even if not mandatorily required, subject to:

- Enabling provisions in Articles, and

Meetings & Decision Making

- Compliance with Rule 20 of Companies (Management and Administration) Rules, 2014

Once adopted, all procedural compliances relating to e-voting must be strictly followed.

Q71. Whether members of a Section 8 Company are permitted to vote by proxy?

A71. Yes. Members of a Section 8 Company are permitted to vote by proxy because Section 105 of the Companies Act, 2013 allows any member entitled to attend and vote to appoint another person as a proxy, with the limitations that a proxy cannot speak and cannot vote on a show of hands, being allowed to vote only on a poll.

However, as per Rule 19 of the Companies (Management & Administration) Rules, 2014, for Section 8 Companies, only a member of the company may be appointed as a proxy, and a person may act as proxy for not more than 50 members and holding not more than 10% of the total voting share capital, as specifically clarified in the proxy rules applicable to Section 8 entities. The appointment of proxy shall be in Form MGT-11.

Q72. Are Section 8 Companies exempt from passing certain resolutions as Special Resolutions?

A72. No blanket exemption exists. However, conversion of a Section 8 Company, alteration of objects, or dissolution requires Special Resolution in Form MGT-14 along with Central Government approval under Section 8(4) & (6) of the Companies Act, 2013.

Q73. Is maintenance of minutes under Section 118 mandatory for Section 8 Companies?

A73. No, Section 118 is largely exempt for Section 8 Companies, because the MCA exemption notification (G.S.R. dated 05.06.2015) explicitly states that Section 118 “shall not apply as a whole” to Section 8 Companies, except that minutes must still be recorded within 30 days where the Articles provide for confirmation of minutes by circulation.

Q74. Can a Section 8 Company conduct General Meetings through Video Conferencing (VC)?

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

A74. Yes. A Section 8 company may conduct General Meetings through VC/OAVM in accordance with MCA General Circular No. 20/2020 dated 05.05.2020, subject to compliance with the requirements laid down in paragraphs 3 and 4 of the said circular.

Q75. Is filing of MGT-14 required for resolutions passed by Section 8 Companies?

A75. Yes. MGT-14 is required for filing:

- Special Resolutions
- Board resolutions as specified under Section 179(3) of the Companies Act, 2013

No general exemption is available to Section 8 Companies in this regard.

Financial Management & ROC Compliance

Q76. What are the obligations of a Section 8 company regarding books of account?

A76. A Section 8 company is mandatorily required to maintain proper books of account in accordance with Section 128 of the Companies Act, 2013. The exemption under Section 8 relates only to application of profits and not to accounting or reporting obligations. Books must give a true and fair view of the state of affairs and be maintained on accrual basis and double entry system.

A Section 8 company may maintain its books of account at a place other than its registered office, provided the Board of Directors passes a resolution approving the same and the prescribed form (Form AOC-5) is filed with the Registrar of Companies within seven days of such decision. This requirement applies equally to Section 8 companies without any relaxation.

Q77. Whether Section 8 companies are required to prepare financial statements and which accounting standards apply?

A77. Yes. Every Section 8 company is required to prepare financial statements in accordance with Section 129 of the Companies Act, 2013 and in compliance with the applicable Accounting Standards notified under Section 133 of the Companies Act, 2013 viz Accounting Standards (AS) or Indian Accounting Standards (Ind AS), as applicable.

Q78. Is statutory audit mandatory for Section 8 companies irrespective of size or turnover?

A78. Yes. Statutory audit is mandatory for all Section 8 companies under Section 139, of the Companies Act, 2013, irrespective of turnover, income, or applicability of exemptions available to small companies or OPCs.

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

Q79. Whether internal audit provisions apply to Section 8 companies?

A79. Internal audit under Section 138 of the Companies Act, 2013 read with Rule 13 of the Companies (Accounts) Rules, 2014 applies based on the category of company:

(a) a listed Company

(b) a private company, is required to appoint an internal auditor if, in the preceding financial year:

- Turnover \geq ₹200 crore, or
- Outstanding loans/borrowings from banks or public financial institutions exceeding ₹100 crore at any point of time during the preceding financial year;

(c) an unlisted public company, is required to appoint an internal auditor if, in the preceding financial year, any one of the following is met:

- Turnover \geq ₹200 crore, or
- Paid-up share capital \geq ₹50 crore, or
- Outstanding loans or borrowings from banks or public financial institutions exceeding ₹100 crore at any point of time during the preceding financial year; or
- Outstanding deposits of ₹25 crore or more at any point of time during the preceding financial year.

There is no blanket exemption for Section 8 companies the thresholds apply equally to charitable companies as to commercial companies.

Q80. Whether rotation of auditors under Section 139(2) is applicable to Section 8 companies?

A80. Section 139(2) of the Companies Act, 2013 applies to Section 8 companies because the MCA exemption notification dated 05.06.2015 (G.S.R. 466(E)) does not exempt them from auditor-rotation requirements, and Section 8 companies are expressly excluded from the definition of “small company” under

Financial Management & ROC Compliance

Section 2(85), so they cannot claim small-company audit relaxations. Under Section 139(2), an individual auditor may serve for one term of five consecutive years, and an audit firm may serve for two terms of five consecutive years, after which a five-year cooling-off period is mandatory; firms with common partners to the outgoing auditor are also barred during this period to ensure auditor independence and prevent long-term familiarity that could impair objectivity.

Q81. Are Section 8 Companies required to file annual financial statements and annual returns under the Companies Act, 2013 to ROC?

A81. Yes. A Section 8 Company must file both its annual financial statements and annual return just like any other company under the Companies Act, 2013.

- **Financial Statements (Section 137):** Must be filed in Form AOC-4 / AOC-4 XBRL within 30 days of the AGM. If the AGM is not held, the adopted financial statements must still be filed within 30 days of the due date. No exemption is available for Section 8 Companies.
- **Annual Return (Section 92):** Must be filed in Form MGT-7 / MGT-7A within 60 days of the AGM. Being charitable or non-profit does not exempt a Section 8 Company from filing its annual return.

Q82. Are cash flow statements mandatory for Section 8 companies?

A82. Yes. Cash flow statement is part of financial statements under Section 2(40) of the Companies Act, 2013. Section 8 companies are not exempted from preparing cash flow statements, unlike OPCs or small companies under specific circumstances.

Q83. Whether Section 8 companies are required to file Cost Audit Reports?

A83. Cost audit under Section 148 of the Companies Act, 2013, is generally not applicable to Section 8 companies, as they do not operate in notified industries or conduct manufacturing/regulated commercial activities, except in rare cases where notified criteria are met.

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

Q84. What are the consequences of non-filing of AOC-4 or MGT-7 by a Section 8 company?

A84. Non-filing attracts:

- Additional fees without cap- Both AOC-4 and MGT-7 attract ₹100 per day of delay, with no maximum limit, leading to very high additional fees for prolonged non-compliance.
- Penalties under Sections 137 and 92 of the Companies Act, 2013- Section 92(5): Company penalty ₹10,000 + ₹100 per day (max ₹2,00,000); officer-in-default max ₹50,000 and Section 137(3): Company penalty ₹10,000 + ₹100 per day (max ₹2,00,000); directors/CFO/MD max ₹50,000.
- Potential disqualification of directors under Section 164(2) of the Companies Act, 2013 - If AOC-4 and MGT-7 are not filed for three consecutive financial years, all directors are disqualified for 5 years.
- Section 8 status does not provide immunity from penal provisions.

Q85. Is secretarial audit applicable to Section 8 companies?

A85. Secretarial audit under Section 204 of the Companies Act, 2013, applies only if the Section 8 company falls within the following classes of companies as prescribed under Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014:

- Is a listed company, or
- Falls under prescribed class (paid-up capital ≥ ₹50 crore or turnover ≥ ₹250 crore or outstanding loans or borrowings from banks or public financial institutions ≥ ₹100 crores).

Otherwise, secretarial audit is not mandatory.

Q86. Can non-compliance with accounting or audit provisions lead to cancellation of Section 8 license?

Financial Management & ROC Compliance

A86. Yes. Persistent or material non-compliance with accounting, audit, or filing obligations may be treated as violation of license conditions under Section 8, leading to:

- Revocation of license
- Conversion into another form
- Penalties and prosecution of officers in default.

Q87. What are the key annual ROC compliances?

A87. Directors and KMPs must ensure timely filing of:

- **AOC-4:** Financial statements
- **MGT-7 / MGT-7A:** Annual return
- **DIR-3 KYC:** Director KYC
- **ADT-1:** Auditor appointment (where applicable)
- Holding the Annual General Meeting which must be held within 6 months of financial year end and there should not be a gap of more than 15 months between two AGMs. However, the first AGM must be held within 9 months from the close of the first financial year; if so, no AGM is required in the year of incorporation.
- Maintenance and updating statutory registers and verifying them annually

CSR Interface with Section 8 Companies

Q88. Is a Section 8 company automatically exempt from CSR obligations under Section 135 of the Companies Act, 2013?

A88. No. A Section 8 company is not automatically exempt from CSR. If it meets any of the financial thresholds prescribed under Section 135(1) of the Companies Act, 2013, net worth, turnover, or net profit, it becomes fully subject to CSR provisions irrespective of its non-profit character.

Q89. How is “net profit” for CSR applicability computed in the case of a Section 8 company?

A89. Net profit is computed in accordance with Section 198 of the Companies Act, 2013, excluding profits arising from overseas branches and dividends from other CSR-compliant companies. Surpluses generated from charitable or social activities are also considered “profits” for this purpose

Q90. Can a Section 8 company claim that its entire operations are CSR and hence Section 135 should not apply?

A90. No. A Section 8 company cannot claim that its entire operations are CSR and therefore Section 135 should not apply, because CSR applicability is determined strictly under Section 135(1) of the Companies Act, 2013, which mandates CSR for every company including Section 8 companies that meets any of the financial thresholds (net worth \geq ₹500 crore, turnover \geq ₹1,000 crore, or net profit \geq ₹5 crore) in the immediately preceding financial year. The Act does not create any category of deemed CSR, and the nature of the company’s objects has no bearing on CSR applicability. CSR is a statutory obligation independent of Section 8 licensing, and Section 8 companies are expressly included among entities to which CSR may apply, as confirmed in CSR guidance noting that CSR obligations apply to all companies meeting the thresholds, including Section 8 companies.

CSR Interface with Section 8 Companies

- Q91. Is a CSR Committee mandatory for a Section 8 company covered under Section 135?**
- A91. Yes, unless exempted under Section 135(9) of the Companies Act, 2013. If CSR obligation is up to ₹50 lakh, the Board may discharge CSR Committee functions.
- Q92. Can trustees or members of a Section 8 company act as CSR Committee members?**
- A92. No A Section 8 company cannot include trustees or members in its CSR Committee because Section 135(1) requires the CSR Committee to be constituted by the Board and to consist of directors only; therefore, only individuals formally appointed as directors under Section 2(34) are eligible, while trustees, members, founders, or advisors who are not directors cannot serve on the CSR Committee.
- Q93. Can a Section 8 company treat its regular programmatic expenditure as CSR spend, or must it design separate CSR projects distinct from its main charitable activities?**
- A93. No, a Section 8 company cannot count its regular programmatic expenditure as CSR, because Rule 2(1)(d)(i) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 expressly excludes activities undertaken in the normal course of business which includes a Section 8 company's routine charitable operations from being treated as CSR spend. Thus, the company must design CSR projects that are clearly separate, independently approved, and distinctly tracked, because CSR under Section 135 is a statutory obligation that must be carried out through identifiable CSR programmes aligned with Schedule VII, not through the organisation's ongoing core activities
- Q94. Is capital expenditure permitted as CSR spend for Section 8 companies?**
- A94. Yes, provided it complies with Rule 7(4) of the CSR Rules and the asset is held by eligible entities such as a Section 8 company, registered public trust, or beneficiaries.
- Q95. Can administrative overheads of a Section 8 company be treated as CSR expenditure?**

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

- A95. Only up to 5% of total CSR expenditure, and only if directly attributable to CSR project administration, not general overheads.
- Q96. Can a Section 8 company act as an implementing agency for CSR projects of other companies?**
- A96. Yes, provided it is registered under Form CSR-1 and meets eligibility criteria under Rule 4(1) of the Companies (CSR Policy) Rules, 2014.
- Q97. Can CSR funds received from other companies be mixed with the Section 8 company's general funds?**
- A97. No. CSR funds must be ring-fenced, separately accounted for, and used strictly for approved CSR purposes.
- Q98. Is a loss-making Section 8 company exempt from CSR obligations?**
- A98. A loss-making Section 8 company is not automatically exempt from CSR obligations, because Section 135(1) of the Companies Act, 2013 applies CSR based on net worth, turnover, or net profit, and meeting either the net worth or turnover threshold triggers CSR applicability even if the company has incurred losses in the relevant year.
- Q99. Can excess CSR expenditure incurred by a Section 8 company be carried forward for CSR set-off?**
- A99. Yes, subject to Board approval and conditions under Rule 7(3) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, which permits companies to set off excess CSR spending against future CSR obligations for up to three succeeding financial years, provided the Board passes a resolution approving such set-off.
- Q100. Can donations made by a Section 8 company to another Section 8 company qualify as CSR?**
- A100. A Section 8 company may treat a donation to another Section 8 company as CSR only when the recipient is an eligible implementing agency registered with the MCA through Form CSR-1 and meets the conditions under Rule 4(1) of the CSR Rules. Moreover, the donation must be tied to a specific, approved CSR project aligned with Schedule VII, and not given as a general or unrestricted

CSR Interface with Section 8 Companies

contribution, since CSR funds must be project-based and implemented only through qualified entities.

Q101. Are Section 8 companies required to include CSR disclosures in the Board's Report?

A101. Yes. CSR reporting under Section 134(3) of the Companies Act, 2013, and Rule 8 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, is mandatory where Section 135 of the Companies Act, 2013 applies.

Q102. Is impact assessment mandatory for Section 8 companies?

A102. Yes. Impact assessment is mandatory for a Section 8 company if it meets the thresholds prescribed under the CSR framework. As per Rule 8(3) of the Companies (CSR Policy) Rules, 2014, companies that have had a CSR obligation of ₹10 crore or more in the three immediately preceding financial years must undertake impact assessments through an independent agency for CSR projects of ₹1 crore or more, completed at least one year earlier. This requirement applies uniformly to all companies covered under Section 135, including Section 8 companies, with no exemption for their charitable character

Q103. Can the cost of impact assessment be treated as CSR expenditure?

A103. Yes, up to 2% of total CSR expenditure or ₹50 lakh, whichever is higher as expressly permitted under Rule 8(3)(c) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

Q104. What are the consequences if a Section 8 company fails to spend the required CSR amount?

A104. If a company fails to comply with CSR provisions under Section 135(5) or 135(6), then under Section 135(7) it must pay a penalty of twice the unspent amount required to be transferred (to a Schedule VII Fund or the Unspent CSR Account) or ₹1 crore, whichever is lower, while every defaulting officer is liable for a penalty of one-tenth of that amount or ₹2 lakh, whichever is lower.

Conversion, Merger & Exit Routes

Q105. Can a Section 8 company enter into a scheme of amalgamation under the Companies Act, 2013?

A105. Yes. Section 8 companies may undertake compromises/arrangements (including mergers/amalgamations) under Sections 230–232 of the Companies Act, 2013 which require NCLT sanction. If the scheme entails alteration of MoA/AoA, Section 8(4)(i) requires prior Central Government approval (delegated to ROC/RD by notification), and notices must go to specified regulators per Section 230(5) of the Companies Act, 2013. The scheme must ensure that the Section 8 charitable character and public-interest obligations are preserved.

Q106. Can a Section 8 company amalgamate with a non-Section 8 company?

A106. No. A Section 8 company cannot amalgamate with a non-Section 8 company. Under Section 8(10) of the Companies Act, 2013, a company registered under Section 8 “shall amalgamate only with another company registered under Section 8 having similar objects.” This restriction preserves the statutory requirements under Section 8(1) that the company’s income and property be applied solely towards its charitable objects and under Section 8(4)(b) that it must not apply its income or assets for any purpose other than its stated objects. Amalgamating with a non-Section 8 (for-profit) company would violate these mandatory conditions, and therefore such a merger is not legally permissible under the Companies Act, 2013.

Q107. What conditions must be satisfied for amalgamation between two Section 8 companies?

A107. The following key conditions must be fulfilled:

- Similar or allied charitable objects
- Transfer of assets and liabilities strictly for charitable use
- No distribution of profits or assets to members

Conversion, Merger & Exit Routes

- Approval of Central Government and NCLT
- Compliance with Section 8 licence conditions and MoA/AoA restrictions

Q108. Whether a Section 8 company can undergo demerger or internal restructuring?

A108. Yes. A Section 8 company may undergo demerger or internal restructuring under Sections 230-232 of the Companies Act, 2013 provided:

- The restructuring does not dilute charitable objects- Section 8(1)
- No dividends or distribution of assets may occur at any stage- Section 8(4)(c)
- Assets remain applied for permitted purposes- Section 8(4)(b)
- Prior approval of Regional Director is required if MOA/AOA requires alteration- Section 8(4)(i)
- NCLT approval is obtained- Sections 230-232

Q109. Is conversion of a Section 8 company into another form of company permitted during restructuring?

A109. Yes. A company registered under Section 8 of the Companies Act, 2013 is permitted to convert itself into a company of any other kind in accordance with Section 8(4)(ii) of the Act read with Rules 21 and 22 of the Companies (Incorporation) Rules, 2014. Such conversion is subject to compliance with the prescribed conditions, including passing of a special resolution, submission of an application to the Regional Director in the prescribed form, and fulfilment of such requirements as may be specified under the said Rules. The conversion shall be allowed only upon satisfaction of the conditions prescribed, and upon approval of the competent authority in accordance with the Rules.

Q110. What is the role of NCLT in amalgamation of Section 8 companies?

A110. The NCLT:

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

- Sanctions the Scheme under Sections 230-232 of the Companies Act, 2013, after examining the fairness and legality of the amalgamation proposal.
- Ensures Preservation of Charitable Character by verifying compliance with Section 8(1) and Section 8(4)(b) i.e., income and property must continue to be applied solely for charitable objects.
- Scrutinizes Public Interest Compliance, ensuring that the amalgamation is not prejudicial to stakeholders or contrary to the company's non-profit mandate.
- Reviews Objections/Representations from regulatory authorities issued under Section 230(5) (ROC, OL, Income Tax Dept., sectoral regulators).
- Confirms Prior Central Government Approval (delegated to the Regional Director) wherever the scheme involves alteration of the MoA/AoA, as required under Section 8(4)(i).
- Approves the Final Scheme Order only after satisfying itself that all statutory requirements for Section 8 companies are met and the charitable intent is fully protected.

Q111. Whether creditors' approval is required in schemes involving Section 8 companies?

A111. Yes. Creditors' approvals are required in schemes involving Section 8 companies, just as they are for any company under Sections 230–232 of the Companies Act, 2013. The NCLT directs whether meetings of creditors or any class of creditors should be convened, and ordinarily, a scheme requires the approval of three-fourths in value of the creditors or the relevant class of creditors as provided under Section 230(6). However, if the company files written consents or no-objection affidavits from creditors holding the requisite 75% in value, the NCLT may dispense with holding such meetings. These rules apply equally to Section 8 companies, subject to the fundamental requirement that the scheme preserves their charitable objectives.

Q112. What happens to the assets of a Section 8 company on winding up?

A112. As per Section 8(9) of the Companies Act, 2013:

- Remaining assets, after settlement of liabilities, cannot be distributed to members
- After all liabilities and obligations have been settled, the surplus assets must be transferred to another Section 8 company with similar objects subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to IEPF.

Q113. Can a Section 8 company be compulsorily wound up?

A113. Yes. A Section 8 company may be compulsorily wound up by NCLT for:

- Acting against its objects
- Fraudulent or unlawful activities
- Persistent violation of licence conditions
- Public interest considerations

Q114. Are Section 8 companies subject to stricter scrutiny in restructuring than other companies?

A114. Yes. Due to their non-profit and public interest character, Section 8 companies are subject to enhanced scrutiny by NCLT, Central Government, and regulators, especially regarding application of assets and continuity of charitable objectives.

Q115. Whether a partnership firm or LLP be converted into a Section 8 company?

A115. Yes. Conversion of a partnership firm or LLP into a company is permitted under Section 366 and the Companies (Authorised to Register) Rules. After conversion into a company, it may apply for Section 8 licence under Rule 19/20 as applicable.

- Assets and liabilities vest in the Section 8 company
- Partners/LLP members become members of the company
- Objects are strictly charitable

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

- Prior consent of all partners/members is obtained
- Registration under other laws (if any) is surrendered or aligned.

Q116. Whether an existing company can be converted into a Section 8 Company?

A116. Yes. As per Section 8(5) of the Companies Act, 2013 read with the Companies (Incorporation) Rules, 2014, an existing company may be converted into a Section 8 Company, subject to the following:

- Passing of special resolution
- Obtaining approval of the Regional Director
- Alteration of Memorandum and Articles of Association in conformity with Section 8
- Filing of Form INC-12 for obtaining licence under section 8

Q117. Whether a Section 8 Company can be converted into a normal another company?

A117. Yes, Conversion is permitted under Section 8(4)(ii) of the Companies Act, 2013 read with Rule 22 of the Companies (Incorporation) Rules, 2014

- Approval of the Central Government (Regional Director) is mandatory.
- A Special Resolution must be passed in the general meeting.
- The company must have filed all financial statements and annual returns up to date.
- No inquiry, inspection, investigation, or regulatory violation should be pending.
- The company must surrender all tax exemptions, privileges, grants, and benefits obtained as a Section 8 Company.
- Accumulated profits or unutilised income must:
 - First be used to clear outstanding liabilities.
 - Remaining balance must be transferred to the IEPF within 30 days of approval (Rule 22, Companies (Incorporation)).

Conversion, Merger & Exit Routes

- Alteration of MOA and AOA is required to remove Section 8 restrictions.
- Application for conversion must be filed with the Regional Director as per Rules 21 & 22.
- All conditions as mentioned in Rule 22 of the Companies (Incorporation) Rules, 2014 is to be followed.

Regulatory Violations & Penalties

Q118. What constitutes a “contravention” specific to a Section 8 company under the Companies Act, 2013?

A118. A contravention for a Section 8 company includes not only violations of general provisions of the Companies Act, 2013, but also breach of the special conditions of licence granted under Section 8(1), such as:

- Application of profits for non-charitable purposes
- Distribution of dividend or indirect benefit to members
- Deviation from stated charitable objects
- Non-compliance with licence conditions prescribed by the Central Government

Q119. Under what circumstances can the Section 8 licence be cancelled?

A119. Licence may be cancelled if the company:

- Contravenes any condition of the licence
- Conducts affairs fraudulently or in violation of its objects
- Acts in a manner prejudicial to public interest
- Fails to apply profits towards charitable purposes
- Persistently defaults in statutory compliances

Q120. Is cancellation of licence automatic upon contravention?

A120. No. Cancellation of licence is not automatic. The Central Government must:

- Issue a show cause notice
- Provide the company a reasonable opportunity of being heard
- Pass a reasoned order recording grounds for cancellation

Regulatory Violations & Penalties

Additionally, Rule 23 of the Companies (Incorporation) Rules, 2014 requires that where the licence granted to Section 8 company has been revoked, the company shall apply to the registrar in Form INC-20 along with fee to convert its status and change of name accordingly.

Q121. Can a Section 8 company continue to operate after cancellation of licence?

A121. Under Section 8(7) and Section 8(8) of the Companies Act, 2013, once the Central Government revokes the Section 8 licence, the company:

- must cease operating as a Section 8 (charitable) company, and
- may be directed to convert into another type of company (i.e., a normal company limited by shares or guarantee), or
- may be directed to be wound up, depending on the seriousness of the contravention.

Further, Section 8(9) mandates that, upon winding up, all remaining assets must be transferred to another Section 8 company with similar objects or to the Insolvency and Bankruptcy Fund, ensuring assets are not misapplied.

Q122. Are penalties under Section 8(11) compoundable?

A122. Yes. After the amendment removing imprisonment from Section 8(11), the offence is now compoundable. This is because, under Section 441 of the Companies Act, 2013, only offences punishable with imprisonment only or with imprisonment and fine are non-compoundable.

Once imprisonment was removed from Section 8(11), it became an offence punishable with fine only, making it compoundable; except in case where the affairs of the companies were conducted fraudulently.

Q123. Does misuse of CSR funds by a Section 8 company attract additional regulatory consequences?

A123. Yes. If a Section 8 company is an implementing agency for CSR projects and misuses CSR funds:

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

- Action may be taken under Section 135 of the Companies Act, 2013
- Blacklisting from CSR implementation
- Licence cancellation under Section 8 of the Companies Act, 2013
- Prosecution for fraud under Section 447 of the Companies Act, 2013, where applicable.

Q124. Can directors escape liability by claiming absence of remuneration?

A124. No. Directors of Section 8 companies are held to a higher fiduciary standard. Absence of remuneration does not absolve directors from liability if they are found to be officers in default or involved in decision-making.

Q125. Is non-filing of annual returns alone sufficient for cancellation of licence?

A125. Isolated non-filing may attract penalties under Sections 137 and 92 of the Companies Act, 2013; however, persistent default, coupled with suspicion of misuse of charitable status, can justify initiation of licence cancellation proceedings.

Q126. What compliance approach helps mitigate regulatory risk for Section 8 companies?

A126. Risk mitigation requires:

- Strict adherence to objects clause
- Transparent utilisation of funds
- Robust internal controls and audit trails
- Regular statutory filings
- Proper documentation of board decisions
- Avoidance of any personal or member-level benefit

Q127. Does winding up of a Section 8 company extinguish past liabilities for contraventions?

Regulatory Violations & Penalties

A127. No. Winding up does not absolve the company or its officers from:

- Past penalties
- Prosecution for offences committed prior to winding up
- Personal liability arising from fraud or misrepresentation

Q128. How does public interest influence regulatory action against Section 8 companies?

A128. Public interest is a dominant consideration. Any action that undermines donor confidence, charitable intent, or public welfare invites stricter enforcement, higher penalties, and expedited regulatory intervention

Q129. What happens if profits or surplus are distributed to members?

A129. This is a serious violation and may trigger:

- Immediate licence revocation proceedings
- Recovery of amounts distributed
- Penalties on directors and officers
- Possible prosecution for fraud or misrepresentation

Q130. Can failure to hold meetings attract penalties?

A130. Yes. Failure to hold:

- Board meetings
- Annual General Meetings

may result in penalties on the company and every officer in default.

Q131. What penalties apply for false statements or concealment?

A131. Making false statements in:

- MOA/AOA
- ROC filings
- Financial statements

can attract penalties under Section 448 and Section 449, including severe monetary penalties and imprisonment in grave cases.

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

Q132. What is the role of the RoC in enforcement?

A132. The Registrar of Companies may:

- Call for information or explanations
- Order inspections or inquiries
- Issue show-cause notices
- Initiate adjudication or prosecution proceedings

Q133. Is compounding of offences available to Section 8 companies?

A133. Yes, for procedural and technical defaults, subject to:

- Payment of compounding fees as determined under Section 441 of the Companies Act, 2013
- Rectification of defaults, wherever applicable
- Approval of competent authority i.e., ROC, Regional Director, or NCLT, depending on the quantum of fine

Serious or fraudulent offences cannot be compounded.

Q134. What are common enforcement triggers in practice?

A134. Common red flags include:

- High remuneration without justification
- Inactive boards and poor documentation
- Repeated late filings
- Related party dominance
- Diversion of charitable funds

Miscellaneous Provisions and Emerging Regulatory Issues

Q135. Whether a Section 8 company requires FCRA Registration or prior permission to receive any foreign contributions or donations?

A135. **Yes.** A Section 8 company must obtain FCRA registration or prior permission before receiving any foreign contribution, because the Foreign Contribution (Regulation) Act, 2010 (FCRA) applies to all non-profit entities including Section 8 companies, charitable trusts, and societies; the Ministry of Home Affairs confirms that Section 8 companies are eligible applicants for FCRA registration, and newly formed entities may receive foreign funds only through the Prior Permission (PP) route for a specific donor, purpose, and amount.

Q136. Does incorporation as a Section 8 company automatically qualify as an entity for FCRA registration?

A136. **No.** **Incorporation** under Section 8 of the Companies Act, 2013 does not automatically entitle a company to FCRA registration. The company must independently satisfy eligibility criteria prescribed under the FCRA, including a minimum operational track record and compliance history.

Q137. Can a Section 8 company receive foreign donations as “fee for services” or “grants” to avoid FCRA compliance?

A137. **No.** Any receipt from a foreign source, whether termed as donation, grant, subscription, or fee, which is not consideration for commercial services rendered at arm’s length, may qualify as “foreign contribution” under Section 2(1)(h) of the FCRA, 2010 and shall attract full FCRA compliance.

Q138. Whether CSR funds received from foreign companies attract the provisions of FCRA, 2010?

A138. **Yes,** where the CSR contribution is received from a foreign source as defined under Section 2(1)(j) of the FCRA, 2010, such

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

contribution shall be treated as foreign contribution, even if routed for CSR purposes, unless specifically exempted by law.

Q139. Is a separate bank account mandatory for receipt of foreign contribution?

A139. Yes. As per Section 17 of the FCRA, 2010 (as amended), all foreign contributions must be received only in the designated FCRA account opened with the specified branch of State Bank of India, New Delhi, and subsequent utilization accounts must also be reported.

Q140. Whether domestic donations received by a Section 8 company are subject to any cap or restriction?

A140. Under the Companies Act, 2013, there is no statutory ceiling on domestic donations. However, such donations must be applied strictly towards the objects of the company, and misapplication may attract action under Section 8(11) and other penal provisions.

Q141. Whether corpus donations are permitted for Section 8 companies?

A141. Yes. Corpus donations are permitted provided they are clearly earmarked by the donor and utilized in accordance with the stated purpose. Improper use of corpus funds may be treated as violation of fiduciary and statutory obligations.

Q142. Whether political donations are permissible for Section 8 companies?

A142. No. Section 182 of the Companies Act, 2013 read with Section 8 principles prohibits political contributions, as such activity is inconsistent with charitable or non-profit objectives.

Q143. What are the consequences if foreign contributions are received in violation of FCRA?

A143. Such receipt may result in cancellation or suspension of FCRA registration, seizure of funds, prosecution under the FCRA, and may also trigger action under Section 8(11) of the Companies Act, including revocation of licence.

Q144. Are there any disclosure requirements specific to donations and grants in statutory filings?

Miscellaneous Provisions and Emerging Regulatory

A144. Yes. Details of donations, grants, foreign contributions, and application of funds must be appropriately disclosed in financial statements, Board's Report, and, where applicable, in FCRA and income-tax returns.

Q145. Can a Section 8 company receive donations in kind?

A145. Yes. A Section 8 company may receive donations in kind, such as goods, equipment, materials, or services. The Companies Act, 2013 does not prohibit non-cash contributions, provided such donations are used strictly for the company's charitable objects in accordance with Section 8(1)(b) and Section 8(4)(b). However, donations in kind must be properly valued, recorded in the books of account as required under Section 128, and disclosed in the financial statements under Section 129 and Schedule III. Where applicable, auditor reporting obligations under Section 143 also apply.

Exemptions and Relaxations

Q146. Are Section 8 Companies required to appoint Independent Directors under Section 149(4) as per the Companies Act 2013?

A146. No. In terms of MCA Notification No. G.S.R. 466(E) dated 5 June 2015 issued under Section 462 of the Companies Act, 2013 (as amended), the provisions of Section 149(4) along with sub-sections (5) to (11), clause (i) of sub-section (12), sub-section (13) and Schedule IV shall not apply to Section 8 companies. Accordingly, Section 8 companies are not required to appoint Independent Directors, irrespective of their paid-up capital, turnover, or borrowings.

Q147. Does the prohibition on passing certain resolutions by circulation under Section 175(1) apply to Section 8 Companies?

A147. No. Section 8 Companies are exempt from the restriction contained in Section 175(1) which normally prohibits passing certain Board matters, especially those listed under Section 179(3) through circular resolution.

Under the MCA Exemption Notification dated 05.06.2015, issued under Section 462 of the Companies Act, Section 8 companies enjoy specific relaxation that permits them to pass Board resolutions by circulation even for matters covered under Section 179(3), unless their Articles of Association restrict it.

Q148. Can exemptions granted to a Section 8 Company be withdrawn due to non-compliance?

A148. Yes. In case of default in filing financial statements or annual returns, the Central Government may withdraw exemptions granted under Section 462 of the Companies Act, 2013 making all provisions of the Act fully applicable.

Q149. Give a summary of the exemptions available to Section 8 Companies

Exemptions and Relaxations

A149. The summary of exemptions available to Section 8 Companies are given in the table below:

Exemptions to Section 8 Companies

Ministry of Corporate Affairs Notifications, G.S.R. 466(E) dated 5 June 2015 & G.S.R. 584(E) dated 13 June 2017

S. No	Heading	Provisions of the Act	Explanation
1.	Appointment of Company Secretary	Section 2(24)	A Section 8 Company can appoint a company secretary who does not fall in the definition of company secretary under Section 2(24). A company secretary has been defined to mean a member of the institute of company secretaries of India (ICSI). However, with this exemption in place a section 8 company can appoint any person as company secretary even if that person is not a member of ICSI.
2.	Minimum Paid-up Share Capital in case of Private Companies	Section 2(68)	A Section 8 company need not have minimum paid up share capital as prescribed under Section 2(68) for a private company. Thus, the companies incorporated under section 8 are free to have any share capital.
3.	Minimum Paid-up Share Capital in case of Public	Section 2(71)	A Section 8 company need not have minimum paid up share capital as prescribed under Section 2(71) for a

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

S. No	Heading	Provisions of the Act	Explanation
	Companies		public company. Thus, the companies incorporated under section 8 are free to have any share capital.
4.	Flexibility in Annual General Meeting (AGM) Scheduling	Section 96(2)	<p>A proviso has been added: "In case of a section 8 company, the time, date and place of each annual general meeting are decided upon before-hand by the Board of Directors having regard to the directions, if any, given in this regard by the company in its general meeting."</p> <p>This proviso provides greater flexibility to Section 8 companies in determining the arrangements for their Annual General Meetings (AGMs). It authorizes the Board of Directors to decide in advance the time, date, and place of the AGM, while ensuring that the Board takes into account any directions or guidelines given by the members in a general meeting.</p>
5.	Notice Period for General Meetings	Section 101(1)	A section 8 company can call a general meeting by giving a clear 14 days

Exemptions and Relaxations

S. No	Heading	Provisions of the Act	Explanation
			notice. In case of companies other than the section 8 company a shareholders meeting can be called only by giving a notice calling such an AGM after 21 clear days.
6.	Exemption from Section 118 Requirements	Section 118	A section 8 company need not comply with the requirements stipulated under section 118 dealing with Minutes of Proceedings of general meetings, meeting of Board of Directors and other meetings and resolutions passed by postal ballot. However, minutes may be recorded within thirty days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.
7.	Right of member to copies of audited financial statement	Section 136(1)	A 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,

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

S. No	Heading	Provisions of the Act	Explanation
			which are to be laid before a company in its general meeting to its members not less than fourteen days before the date of the meeting.
8.	Director Requirements	Section 149(1)(b) and the first proviso thereof	A section 8 company need not comply with the requirement of the minimum and maximum number of directors as stipulated under section 149(1)(b) and the first proviso thereof.
9.	Exemption from Appointment of Independent Directors	Section 149(4), (5), (6), (7), (8), (9), (10), (11), 12(i) and (13)	A Section 8 company is exempt from the requirement to appoint independent directors, as Section 149(4) to 149(13) of the Companies Act, 2013, covering their appointment, qualifications, duties, tenure, and related compliances does not apply to Section 8 Companies.
10.	Exemption from Manner of selection of independent Directors and maintenance of databank	Section 150	Section 150, relating to the selection of independent directors and the maintenance of the independent directors' databank, does not apply to Section 8 companies.
11.	Consent Letter for	Section	A section 8 company need

Exemptions and Relaxations

S. No	Heading	Provisions of the Act	Explanation
	Directors	152(5)	not obtain a consent letter from directors and file the same with RoC within 30 days of appointment as required under section 152(5).
12.	Notice of Candidature for Directors	Section 160	A section 8 company need not comply with the requirements of section 160 with respect to notice of candidature for appointment of a director other than a retiring director if the Articles of Association of such company provide for election of directors by ballot.
13.	Directorship Limitation	Section 165(1)	The restrictions in section 165(1) with respect to limits on directorship will not apply to section 8 companies.
14.	Frequency of Board Meetings	Section 173 (1)	A section 8 company can hold meetings of the Board of Directors once every six calendar months which is in contrast with the quarterly requirement of holding board meetings.
15.	Quorum Requirement for Board Meetings	Section 174 (1)	The quorum requirement for Board meetings of a section 8 company shall be either 8 members or 25%

Frequently Asked Questions on Section 8 Companies under the Companies Act, 2013

S. No	Heading	Provisions of the Act	Explanation
			of the total strength, whichever is less. However, the quorum shall not be less than 2 members.
16.	Audit Committee Composition	Section 177(2)	A Section 8 company can have an Audit Committee without majority of Independent Directors.
17.	Nomination and Remuneration Committee and Stakeholders Relationship Committee	Section 178	A section 8 company need not comply with the requirements of section 178 concerning constituting the Nomination and Remuneration Committee and Stakeholders Relationship Committee.
18.	Exemptions for Decisions by Circulation	Section 179(3)	Matters referred to in clauses (d), (e) and (f) of sub-section (3) may be decided by the Board by circulation instead of at a meeting.
19.	Exemption w.r.t. Disclosure of Interest by Director	Section 184(2)	For Section 8 companies, the disclosure of interest requirements under Section 184(2) apply only when a related-party transaction under Section 188 exceeds ₹1 lakh.
19A.	Loan and Investment by Company	Section 186(7)	The MCA notification does not provide any specific exemption to Section 8

Exemptions and Relaxations

S. No	Heading	Provisions of the Act	Explanation
			companies under Section 186(7). The only change made to Section 186(7) in the exemption/amendment notifications is a proviso applicable to companies in which 26% or more of the paid-up share capital is held by the Central or State Governments, relating to loans for Industrial Research and Development.
20.	Exemption from maintaining Register of Contracts or Arrangements in Which Directors Are Interested	Section 189	For Section 8 companies, the requirement to maintain a register of contracts or arrangements in which directors are interested under Section 189 applies only if the related-party transaction under Section 188 exceeds ₹1 lakh.

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